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IN THIS ISSUE

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For those persons that have questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address, but are not inclusive.

Rule Notices, Filings, Register, Deadlines, Copies of Proposed Rules, etc.

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Ruby Creech, Publications Coordinator — rcreech@oah.state.nc.us

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Office of State Budget and Management
116 West Jones Street — (919) 733-7061
Raleigh, North Carolina 27603-8005 — (919) 733-0640 FAX

contact: Mark Sisak, Economist III — mssisak@osbm.state.nc.us

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Rules Review Commission
1307 Glenwood Ave., Suite 159 — (919) 733-2721
Raleigh, North Carolina 27605 — (919) 733-9415 FAX

contact: Joe DeLuca Jr., Staff Director/Counsel
Bobby Bryan, Staff Attorney

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Joint Legislative Administrative Procedure Oversight Committee
545 Legislative Office Building
300 North Salisbury Street — (919) 733-2578
Raleigh, North Carolina 27611 — (919) 715-5460 FAX

contact: Mary Shuping, Staff Liaison — marys@ncga.state.nc.us

County and Municipality Government Questions or Notification

NC Association of County Commissioners
215 North Dawson Street — (919) 715-2893
Raleigh, North Carolina 27603

contact: Jim Blackburn or Rebecca Troutman

NC League of Municipalities
215 North Dawson Street — (919) 715-4000
Raleigh, North Carolina 27603

contact: Paula Thomas

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This issue contains documents officially filed through July 13, 1998.

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IN THIS ISSUE

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The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

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2	Agriculture	Architecture	2
3	Auditor	Athletic Trainer Examiners	3
4	Commerce	Auctioneers	4
5	Correction	Barber Examiners	6
6	Council of State	Certified Public Accountant Examiners	8
7	Cultural Resources	Chiropractic Examiners	10
8	Elections	Employee Assistance Professionals	11
9	Governor	General Contractors	12
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(June 1998 - March 1999)

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					A. non-substantial economic impact			B. substantial economic impact			
volume and issue number	issue date	last day for filing	earliest register issue for publication of text	earliest date for public hearing	end of required comment period	deadline to submit to RRC for review at next RRC meeting	first legislative day of the next regular session	end of required comment period	deadline to submit to RRC for review at next RRC meetiog	first legislative day of the next regular session	270th day from issue date
12:23	06/01/98	05/08/98	08/03/98	06/16/98	07/01/98	07/20/98	01/27/99	07/31/98	08/20/98	01/27/99	02/26/99
12:24	06/15/98	05/22/98	08/14/98	06/30/98	07/15/98	07/20/98	01/27/99	08/14/98	08/20/98	01/27/99	03/12/99
13:01	07/01/98	06/10/98	09/01/98	07/16/98	07/31/98	08/20/98	01/27/99	08/31/98	09/21/98	01/27/99	03/28/99
13:02	07/15/98	06/23/98	09/15/98	07/30/98	08/14/98	08/20/98	01/27/99	09/14/98	09/21/98	01/27/99	04/11/99
13:03	08/03/98	07/13/98	10/15/98	08/18/98	09/02/98	09/21/98	01/27/99	10/02/98	10/20/98	01/27/99	04/30/99
13:04	08/14/98	07/24/98	10/15/98	08/31/98	09/14/98	09/21/98	01/27/99	10/13/98	10/20/98	01/27/99	05/11/99
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13:18	03/15/99	02/22/99	05/14/99	03/30/99	04/14/99	04/20/99	05/00	05/14/99	05/20/99	05/00	12/10/99

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

(1) temporary rules;
(2) notices of rule-making proceedings;
(3) text of proposed rules;
(4) text of permanent rules approved by the Rules Review Commission;
(5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
(6) Executive Orders of the Governor;
(7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
(8) orders of the Tax Review Board issued under G.S. 105-241.2; and
(9) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month closest to (either before or after) the first or fifteenth respectively that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF RULE-MAKING PROCEEDINGS

END OF COMMENT PERIOD TO A NOTICE OF RULE-MAKING PRO-CEEDINGS: This date is 60 days from the issue date. An agency shall accept comments on the notice of rule-making proceeding until the text of the proposed rules is published, and the text of the proposed rule shall not be published until at least 60 days after the notice of rule-making proceedings was published.

EARLIEST REGISTER ISSUE FOR PUBLICATION OF TEXT: The date of the next issue following the end of the comment period.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD

(1) RULE WITH NON-SUBSTANTIAL ECONOMIC IMPACT: An agency shall accept comments on the text of a proposed rule for at least 30 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

(2) RULE WITH SUBSTANTIAL ECONOMIC IMPACT: An agency shall accept comments on the text of a proposed rule published in the Register and that has a substantial economic impact requiring a fiscal note under G.S. 150B-21.4(b1) for at least 60 days after publication or until the date of any public hearing held on the rule, whichever is longer.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY: This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.

This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DIVISION OF FACILITY SERVICES

Notice is hereby given that Memorial Mission Hospital, Inc. and St. Joseph's Hospital, holders of a Certificate of Public Advantage (COPA) issued by the Department of Health and Human Services with the consent of the North Carolina Attorney General pursuant to N.C. Gen. Stat. §131E-192.5 on December 21, 1995, have petitioned to amend the COPA.

The amendment would reflect a proposed merger of St. Joseph's Hospital with and into Memorial Mission Hospital and the merger of Mission-St. Joseph's Health System, Inc. with and into Memorial Mission's parent, Memorial Mission Medical Center, Inc.

The Department and the Attorney General will receive written comments on the proposed amendment through August 31, 1998. Comments may be addressed to:

Mr. Robert J. Fitzgerald
Deputy Director
Division of Facility Services
N.C. Department of Health and Human Services
Post Office Box 29530
Raleigh, North Carolina 27626-0530

OR

Mr. Kip D. Sturgis
Assistant Attorney General
N. C. Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602-0629

Notice is hereby given that pursuant to N.C. Gen. Stat. §131E-192.9 the Department of Health and Human Services has received a Periodic Report from Memorial Mission Hospital, Inc. and St. Joseph's Hospital. The Periodic Report is required by the statute from holders of a Certificate of Public Advantage (COPA). The Hospitals hold a COPA issued December 21, 1995 by the Department of Health and Human Services with the consent of the Attorney General.

Written comments on the report and on the benefits and disadvantages of continuing the COPA will be received through August 31, 1998, and should be addressed to:

Mr. Robert J. Fitzgerald
Deputy Director
Division of Facility Services
N.C. Department of Health and Human Services
Post office Box 29530
Raleigh, North Carolina 27626-0530

OR

Mr. Kip D. Sturgis
Assistant Attorney General
N. C. Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602-0629

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE
TAX REVIEW BOARD

IN THE MATTER OF:
The Proposed Assessments of Additional Highway Use Tax
for the period of June 1, 1993 through February 28, 1997,
by the Secretary of Revenue vs. Daily Car Rental, Inc. Taxpayer

ADMINISTRATIVE
DECISION NUMBER: 346

This matter was heard before the Tax Review Board in the city of Raleigh, on April 28, 1998, upon Taxpayer's petition for administrative review of the Final Decision of the Secretary of Revenue sustaining a proposed assessment of alternate highway use tax for the period of June 1, 1993, through February 28, 1997. Taxpayer was presented at the hearing by E. Cader Howard, Edwin P. Friedberg, and Nancy Krolikowski, Attorneys at Law. The Secretary of Revenue was represented at the hearing by George W. Boylan, Special Deputy Attorney General.

Chairman Harlan E. Boyles, State Treasurer presided over the hearing with Jo Anne Sanford, Chair, Utilities Commission and duly appointed member, Noel L. Allen, Attorney at Law participating.

Pursuant to G.S. 105-241.1, Notice of Motor Vehicle Lease-Audit Tax Assessment for the period of June 1, 1993 through February 28, 1997, was mailed to Taxpayer on April 9, 1997, assessing highway use tax, plus penalties and interest. Taxpayer objected to the assessment and timely requested a hearing before the Secretary of Revenue. By final decision entered on December 22, 1997, the Assistant Secretary modified the assessment against the Taxpayer for the period of June 1, 1993, through February 28, 1997. The Assistant Secretary determined that on the general ledger accounts, Taxpayer described the amounts collected from its customers by various terms, including "sales tax payable," "sales tax payable surcharge" "surcharge." "tax surcharge," "revenue surcharge." and "sales tax surcharge." The Assistant Secretary concluded that all entries classified as "sales tax payable" or "sales tax payable surcharge" represented collections of tax and sustained the assessments to that extent. The remainder of the assessments was vacated. Accordingly, the amount of the actual proposed assessment was reduced from approximately $59,000 to $24,000. Pursuant to G.S. 105-241.2, Taxpayer timely filed notice and petition for administrative review of the Assistant Secretary's final decision with the Tax Review Board.

ISSUE

The issue to be decided in this matter is as follows:

Did the Secretary of Revenue properly sustain the assessment for over collected highway use tax?

EVIDENCE

The evidence presented at hearing before the Secretary of Revenue and included in the record presented to the Board is as follows:

1. Face sheet of auditor's report and audit comments dated March 20, 1997, designated as Exhibit E-1.
2. Notice of Motor Vehicle Lease-Audit Tax Assessment dated April 9, 1997, designated as Exhibit E-2.
3. Rental agreements and customer invoices, designated as Exhibit E-3.
4. Ledger sheet from taxpayer's records, designated as Exhibit E-4.
5. Letter dated April 17, 1997, and attachments from taxpayer's attorney to Secretary of Revenue, designated as Exhibit E-5.
6. Letter dated May 27, 1997, from Sales and Use Tax Division to taxpayer's attorney, designated as Exhibit E-6.
7. Letter dated May 30, 1997, from taxpayer's attorney to Sales and Use Tax Division, designated as Exhibit E-7.
8. Letter dated June 19, 1997, from the Assistant Secretary for Legal and Financial Services to taxpayer's attorney, designated as Exhibit E-8.

9. Memorandum dated April 18, 1996, designated as Exhibit E-9.
10. Brief for Tax Hearing, designated as Exhibit E-10.
11. Taxpayer's Exhibits A through I, designated as Exhibit TP-1.
12. Letter dated September 22, 1997, from taxpayer's attorney to the Assistant Secretary and attachments, designated as Exhibit TP-2.

FINDINGS OF FACT

The Board considered the following findings of fact made by the Assistant Secretary in determining its decision:

1. Taxpayer is a corporation engaged in the business of renting motor vehicles on a short-term basis and is also a designated agent for Ryder Truck Rental.
2. The Highway Use Tax Act allows a motor vehicle lessor to pay the highway use tax on a motor vehicle held for lease or rental when applying for a certificate of title or collect and remit the alternate highway use tax on the gross receipts of the lease or rental.
3. Taxpayer paid the highway use tax to the North Carolina Division of Motor Vehicles when applying for certificates of title.
4. Under paragraph 12.D of its rental agreement, taxpayer charged its lessees amounts equal to the rate of the North Carolina highway use tax applicable to short-term rentals of motor vehicles but did not remit the amounts to the Department.
5. Taxpayer denominates the amounts charged its lessees under paragraph 12.D as taxes.
6. In taxpayer's general ledger accounts, supporting schedules refer to these amounts by various terms such as "surcharge," "sales tax," and "sales tax payable."
7. G.S. 105-187.5 requires the Secretary of Revenue to administer the alternate highway use tax in the same manner as the sales tax levied on leases or other tangible personal property.
8. 105-164.11 provides that a tax erroneously collected on exempt of nontaxable sales (rentals) shall be remitted to the Secretary and shall be refunded to the taxpayer only if the purchaser (lessee) has received credit for or a refund of such tax.
9. Taxpayer did not remit to its purchasers (lessees) any of the amounts collected by it as surcharges, sales tax, etc.

CONCLUSIONS OF LAW

The Board considered the following conclusions of law made by the Assistant Secretary in the final decision:

1. Taxpayer was at all relevant times a lessor of motor vehicles.
2. Amounts collected from customers designated as "Sales Tax Payable" or "Sales Tax Payable Surcharge" constitute erroneous collections of tax and must be remitted to the Department.
3. Amounts collected from customers designated as "Surcharge," "Tax Surcharge" "Revenue Surcharge," "Sales Tax," or "Sales Tax Surcharge" to the extent consistently documented as such for accounting purposes upon taxpayer's books and records constitute reimbursement of tax paid and are not erroneous collections.

DECISION

The scope of administrative review for petitions filed with the Tax Review Board is governed by G.S. 105-241.2(b2). After the Board conducts a hearing this statute provides in pertinent part:

> (b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

The Board having conducted a hearing in this matter and having considered the petition, the briefs, the record and the final decision of the Assistant Secretary, concludes that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record; that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact; therefore the decision of the Assistant Secretary should be confirmed.

IT IS THEREFORE ORDERED, that the Board **confirms** in every respect the Assistant Secretary's final decision in this manner for the period of June 1, 1993, through February 28, 1997.

Made and entered into this 24th day of June, 1998.

TAX REVIEW BOARD

s/Harlan E. Boyles, Chairman
State Treasurer

s/Jo Anne Sanford
Chair, Utilities Commission

s/Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE
TAX REVIEW BOARD

IN THE MATTER OF:

The Proposed Assessments of Additional Income Tax for the Taxable Years 1993, 1994, and 1995 by the Secretary of Revenue of North Carolina vs. Frederick E. and Irene R. Adams, Taxpayers

ADMINISTRATIVE DECISION Number: 347

This matter was heard before the Tax Review Board in the city of Raleigh, on April 28, 1998, upon Taxpayers' petition for administrative review of the Final Decision of the Secretary of Revenue sustaining the assessment of additional tax, including penalty and interest, assessed against them for tax years 1993, 1994, and 1995. Taxpayer appeared at the hearing pro se. Marilyn R. Mudge, Assistant Attorney General appeared at the hearing on behalf of the Secretary of Revenue.

Chairman Harlan E. Boyles, State Treasurer presided over the hearing with Jo Anne Sanford, Chair, Utilities Commission and duly appointed member, Noel L. Allen, Attorney at Law participating.

Pursuant to G.S. 105-241.1, Notices of Individual Income Tax Assessment for tax years 1993, 1994, and 1995 were mailed to Taxpayers on December 30, 1996, assessing additional income tax, a ten percent late-payment penalty, and accrued interest. For the tax years 1994, and 1995, a penalty was also assessed for the underpayment of estimated income tax. The assessments resulted from the auditor disallowing tax credits for the tax years 1993, 1994, and 1995, in the amounts of $1,000, $1,000 and $500, respectively, claimed by Taxpayers on their income tax returns for solar heating, cooling, and hot water system. Taxpayers objected to the assessments and timely requested a hearing before the Secretary of Revenue. By final decision entered on July 23, 1997, the Assistant Secretary sustained the assessments against the Taxpayers for the tax years 1993, 1994, and 1995. Pursuant to G.S. 105-241.2, Taxpayers timely filed notice and petition for administrative review of the Assistant Secretary's final decision with the Tax Review Board.

ISSUE

The issue to be decided in this matter is as follows:

Were the solar credits claimed on Taxpayers' 1993, 1994, and 1995 individual income tax returns properly disallowed?

EVIDENCE

The evidence presented at hearing before the Secretary of Revenue and included in the record presented to the Board is as follows:

1. Memorandum dated April 18, 1996, from the Secretary of Revenue to the Assistant Secretary of Revenue, designated as Exhibit PT-1.
2. Taxpayers' North Carolina individual income tax return for the taxable year 1990, designated as Exhibit PT-2.
3. Taxpayers' North Carolina individual income tax return for the taxable year 1991, designated as Exhibit PT-3.
4. Taxpayers' North Carolina individual income tax return for the taxable year 1992, designated as Exhibit PT-4.
5. Taxpayers' North Carolina individual income tax return for the taxable year 1993, designated as Exhibit PT-5.
6. Taxpayers' North Carolina individual income tax return for the taxable year 1994, designated as Exhibit PT-6.
7. Taxpayers' North Carolina individual income tax return for the taxable year 1995, designated as Exhibit PT-7.
8. Notice of Individual Income Tax Assessment for the taxable year 1993, dated December 30, 1996, designated as Exhibit PT-8.
9. Notice of Individual Income Tax Assessment for the taxable year 1994, dated December 30, 1996, designated as Exhibit PT-9.
10. Notice of Individual Income Tax Assessment for the taxable year 1995, dated December 30, 1996, designated as Exhibit PT-10.

11. Title 17, North Carolina Administrative Code, Subchapter 6B, Rule .0605, designated as Exhibit PT-11.
12. Letter from Manager of Office Examination Division to Taxpayers dated December 30, 1996, designated as Exhibit PT-12.
13. Undated letter from Taxpayer to Manager of Office Examination Division, designated as Exhibit PT-13.
14. Letter from Caroline A. Smith to Taxpayers dated February 12, 1997, designated as Exhibit PT-14.
15. File Note from Carolina A. Smith dated February 19, 1997, designated as Exhibit PT-15.
16. Letter from Assistant Secretary to Taxpayers dated February 21, 1997, designated as Exhibit PT-16.
17. Taxpayers' North Carolina individual income tax return for taxable year 1989, designated as Exhibit PT-17.
18. Letter from Michael A. Hannah to Taxpayers dated April 2, 1997, designated as Exhibit PT-18.

FINDINGS OF FACT

The Board considered the following findings of fact made by the Assistant Secretary in determining its decision:

1. Taxpayers timely filed their joint individual income tax returns for the taxable years 1989, 1990, 1991, 1992, 1993, 1994, and 1995.
2. Taxpayers claimed an income tax credit of $1,000 for a solar heating, cooling or hot water system on their income tax returns for the tax years 1989 through 1994. On their 1995 return, they claimed an income tax credit of $500 for a solar heating, cooling or hot water system.
3. The auditor disallowed tax credits of $1,000, $1,000, and $500 for the tax years of 1993, 1994, and 1995. The Department of Revenue is prevented by the statute of limitations from disallowing the tax credits claimed by the Taxpayers on their income tax returns for tax years 1990, 1991, and 1992.
4. Taxpayers were allowed the solar energy tax credit of $1,000 claimed on their 1989 income tax return.

CONCLUSIONS OF LAW

The Board considered the following conclusions of law made by the Assistant Secretary in the final decision:

1. A tax credit is allowed to an individual who constructs or installs a solar heating, cooling, or hot water system in a building located in North Carolina which the taxpayer owns or controls. The credit is limited to twenty-five percent of the cost of the system, up to a maximum credit of $1,000 per system or per year on any single building or for each family unit of a multi-dwelling which is individually metered for electric power or natural gas or with a separate furnace for oil heat paid by an occupant. If the credit exceeds the tax due by all other credits, any unused credit may be carried over for up to three succeeding years.
2. Taxpayers were allowed the maximum solar energy tax credit of $1,000 on their 1989 individual income tax return; therefore, there is no solar energy tax credit to be carried over to the tax years 1990 through 1995.

DECISION

The scope of administrative review for petitions filed with the Tax Review Board is governed by G.S. 105-241.2(b2). After the Board conducts a hearing this statute provides in pertinent part:

> (b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

G.S. 105-151.2 allows a tax credit equal to 25% of the cost of installing a solar hot water, heating, or cooling system, "**provided that the credit allowed under this section may not exceed one thousand dollars ($1,000) per system** or per year on any single building or for each family dwelling unit of a multi-dwelling building . . ." (Emphasis added). The Taxpayers were allowed a total credit of $1,000 as provided for under the statute. Taxpayers were not entitled to the tax credits claimed on their individual income tax returns for 1993, 1994, and 1995.

The Board having conducted a hearing in this matter and having considered the petition, the Secretary's brief, the record and the final decision of Assistant Secretary, concludes that there exist sufficient evidence in the record, to confirm the Assistant Secretary's decision as to the assessment of additional income tax and interest assessed against the Taxpayers for tax years 1993, 1994, 1995; however the Board reverses the Assistant Secretary's decision regarding the penalty imposed against the Taxpayers for tax years 1993, 1994, and 1995.

IT IS THEREFORE ORDERED, that the Board **confirms** the Assistant Secretary's final decision as to the assessment of additional income tax and interest assessed against the Taxpayers for tax years 1993, 1994, and 1995. The Board **reverses** the Assistant Secretary's final decision concerning the penalty imposed against the Taxpayers and orders that the final decision be modified accordingly.

Made and entered into this 24th day of June, 1998.

TAX REVIEW BOARD

s/Harlan E. Boyles, Chairman
State Treasurer

s/Jo Anne Sanford
Chair, Utilities Commission

s/Noel L. Allen, Appointed member

A Notice of Rule-making Proceedings is a statement of subject matter of the agency's proposed rule making. The agency must publish a notice of the subject matter for public comment at least 60 days prior to publishing the proposed text of a rule. Publication of a temporary rule serves as a Notice of Rule-making Proceedings and can be found in the Register under the section heading of Temporary Rules. A Rule-making Agenda published by an agency serves as Rule-making Proceedings and can be found in the Register under the section heading of Rule-making Agendas. Statutory reference: G.S. 150B-21.2.

TITLE 10 - DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHAPTER 50 - MEDICAL ASSISTANCE

SUBCHAPTER 50B - ELIGIBILITY DETERMINATION

Notice of Rule-making Proceedings *is hereby given by the DHHS - Division of Medical Assistance in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.*

Citation to Existing Rules Affected by this Rule-Making: *10 NCAC 50B .0311. Other rules may be proposed in the course of the rule-making process.*

Authority for the rule-making: *G.S. 108A-54; 108A-55; 108A-58; 42 C.F.R. 435.121; 42 C.F.R. 435.210; 42 C.F.R. 435.711; 42 C.F.R. 435.712; 42 C.F.R. 435.734; 42 C.F.R. 435.823; 42 C.F.R. 435.840; 42 C.F.R. 435.841; 42 C.F.R. 435.845; 42 C.F.R. 445.850; 42 C.F.R. 435.851; 45 C.F.R. 233.20; 45 C.F.R. 233.51; 42 U.S.C. 703, 704 1396*

Statement of the Subject Matter: *To be eligible under some Medicaid coverage groups, an individual must have countable resources that do not exceed the reserve limit for that group. This Rule describes what are countable resources.*

Reason for Proposed Action: *In part, the rule allows for excluding from countable resources those resources that are owned by a person who is incompetent and for whom there is no individual with legal authority to access the resources on behalf of the incompetent person. The amendment will clarify and further define when an individual's resources are excluded because he is alleged to be incompetent.*

Comment Procedures: *Written comments concerning this rule-making action must be submitted to Portia W. Rochelle, Rule-making Coordinator, Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603.*

TITLE 13 - DEPARTMENT OF LABOR

Notice of Rule-making Proceedings *is hereby given by the North Carolina Department of Labor, WORD Division in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.*

Citation to Existing Rules Affected by this Rule-Making: *No rules presently exist. New rules will be proposed. Other rules may be proposed in the course of the rule-making process.*

Authority for the rule-making: *G.S. 95-242*

Statement of the Subject Matter: *Adoption of rules for the enforcement of Article 21 of Chapter 95 of the North Carolina General Statutes.*

Reason for Proposed Action: *To adopt a set of guidelines for the initiation, processing, and closing of complaints filed pursuant to the Retaliatory Employment Discrimination Act, found at Article 21 of Chapter 95 of the North Carolina General Statutes.*

Comment Procedures: *Written comments must be delivered or mailed to Ranee S. Sandy, North Carolina Department of Labor, 4 West Edenton Street, Raleigh, NC 27601-1092.*

* *

CHAPTER 12 - WAGE AND HOUR

Notice of Rule-making Proceedings *is hereby given by the North Carolina Department of Labor, Wage and Hour Division in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.*

Citation to Existing Rules Affected by this Rule-Making: *13 NCAC 12 .0101, .0303 - .0307, .0501 - .0502, .0801 - .0802. Other rules may be proposed in the course of the rule-making process.*

Authority for the rule-making: *G.S. 95-25.19*

Statement of the Subject Matter: *Rules regarding the enforcement of the Wage and Hour Act.*

Reason for Proposed Action: *To update the Wage and Hour regulations. As part of the process of revising these Rules, the Department proposes a rearrangement of the rule numbers in certain sections to clarify the rules.*

Comment Procedures: *Written comments must be delivered or mailed to Ranee S. Sandy, North Carolina Department of Labor,*

4 West Edenton Street, Raleigh, NC 27601-1092.

* *

CHAPTER 13 - BOILER AND PRESSURE VESSEL

***Notice of Rule-making Proceedings** is hereby given by the North Carolina Department of Labor, Boiler and Pressure Vessel Division in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.*

Citation to Existing Rules Affected by this Rule-Making: *13 NCAC 13 in its entirety. Other rules may be proposed in the course of the rule-making process.*

Authority for the rule-making: *G.S. 95-69.14*

Statement of the Subject Matter: *Boiler and pressure vessel rules regarding administration of the Division, enforcement of standards, and general requirements for the operation of boilers and pressure vessels.*

Reason for Proposed Action: *To update and clarify the administrative rules regarding the Uniform Boiler and Pressure Vessel Act.*

Comment Procedures: *Written comments must be delivered or mailed to Ranee S. Sandy, North Carolina Department of Labor, 4 West Edenton Street, Raleigh, NC 27601-1092.*

TITLE 15A - DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

***Notice of Rule-making Proceedings** is hereby given by the North Carolina Wildlife Resources Commission in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.*

Citation to Existing Rules Affected by this Rule-Making: *15A NCAC 10F .0330. Other rules may be proposed in the course of the rule-making process.*

Authority for the rule-making: *G.S. 75A-3; 75A-15*

Statement of the Subject Matter: *No Wake Zone - Spooners Creek, Morehead City, Carteret County*

Reason for Proposed Action: *The Town of Morehead City initiated the no-wake zone pursuant to G.S. 75A-15 to protect public safety in the area by restricting vessel speed. The Wildlife Resources Commission may adopt this Rule as a temporary rule pursuant to S.L. 1997-0403 following this abbreviated notice.*

Comment Procedures: *The record will be open for receipt of written comments from August 3, 1998 to October 4, 1998. Such written comments must be delivered or mailed to the North Carolina Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.*

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 8 - BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

***Notice of Rule-making Proceedings** is hereby given by the North Carolina State Board of CPA Examiners in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.*

Citation to Existing Rules Affected by this Rule-Making: *21 NCAC 8A .0301, .0310; 8H .0001; 8J .0002, .0007 - .0008, .0010 - .0011; 8K .0104; 8M; 8N .0208, .0302 - .0303, and .0307. Other rules may be proposed in the course of the rule-making process.*

Authority for the rule-making: *G.S. 55B; 57C; 59; 93-1; 93-3; 93-4; 93-12(2); 93-12(5); 93-12(6); 93-12(7a); 93-12(8a); 93-12(8b); 93-12(8c); 93-12(9)*

Statement of the Subject Matter: *The NC State Board of CPA Examiners proposes to amend and adopt rules relevant to reciprocal certification, firm registration and ownership, professional ethics and conduct, and definitions, as needed.*

Reason for Proposed Action: *To amend and adopt language resulting from the amended Uniform Accountancy Act, which is a document that the Board uses as guidance to reflect current protection of the public and uniform regulation of its licensees.*

Comment Procedures: *Any person interested in these Rules may submit comments within 60 days of the date of this publication by mailing the comments to Robert N. Brooks, Executive Director, NC State Board of CPA Examiners, PO Box 12827, Raleigh, NC 27605-2827.*

This Section contains the text of proposed rules. At least 60 days prior to the publication of text, the agency published a Notice of Rule-making Proceedings. The agency must accept comments on the proposed rule for at least 30 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. The required comment period is 60 days for a rule that has a substantial economic impact of at least five million dollars ($5,000,000). Statutory reference: G.S. 150B-21.2.

TITLE 10 - DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Facility Services intends to amend rule cited as 10 NCAC 3R .0214. Notice of Rule-making Proceedings was published in the Register on October 15, 1997.

Proposed Effective Date: *April 1, 1999*

A Public Hearing *will be conducted at 2:00 p.m. on September 14, 1998 at the Council Building, 701 Barbour Drive, Room 201, Raleigh, NC 27603.*

Reason for Proposed Action: *The rule was the subject of a contested case and is being changed based on the Agency's conclusions in that case.*

Comment Procedures: *Persons interested in the rule are invited to attend the public hearing and make oral comments or submit written comments. The deadline for submission of all written comments is 5:00 p.m. on September 14, 1998. Written comments should be submitted to Jackie Sheppard, Rule-making Coordinator, Division of Facility Services, PO Box 29530, Raleigh, NC 27626-0530, Telephone: 919-733-2342.*

Fiscal Note: *This Rule does not affect the expenditures or revenues of state or local government funds. This Rule does not have a substantial economic impact of at least five million dollars ($5,000,000) in a 12-month period.*

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3R - CERTIFICATE OF NEED REGULATIONS

SECTION .0200 - EXEMPTIONS

.0214 REPLACEMENT EQUIPMENT

(a) The purpose of this Rule is to define the terms used in the definition of "replacement equipment" set forth in G.S. 131E-176(22a).

(b) "Activities essential to acquiring and making operational the replacement equipment" means those activities which are indispensable and requisite, absent which the replacement equipment could not be acquired or made operational.

(c) "Comparable medical equipment" means equipment which is functionally similar and which is used for the same diagnostic or treatment purposes.

(d) Replacement equipment is comparable to the equipment being replaced if:

(1) it has the same basic technology as the equipment currently in use, although it may possess expanded capabilities due to technological improvements; and

(2) it is functionally similar and is used for the same diagnostic or treatment purposes as the equipment currently in use and is not used to provide a new health service; and

(3) the acquisition of the equipment does not result in more than a 10% increase in patient charges or per procedure operating expenses within the first twelve months after the replacement equipment is ~~acquired; and~~ acquired.

~~(4) it will be located on the same site or campus as the equipment currently in use.~~

(e) Replacement equipment is not comparable to the equipment being replaced if:

(1) the replacement equipment is new or reconditioned, the existing equipment was purchased second-hand, and the replacement equipment is purchased less than three years after the acquisition of the existing equipment; or

(2) the replacement equipment is new, the existing equipment was reconditioned when purchased, and the replacement equipment is purchased less than three years after the acquisition of the existing equipment; or

~~(3) the replacement equipment is permanently fixed equipment and the existing equipment is one a piece of mobile equipment which is shared between two or more facilities.; or~~

~~(4)~~(3) the replacement equipment is capable of performing procedures that could result in the provision of a new health service or type of procedure that has not been provided with the existing equipment; or

~~(5)~~(4) the replacement equipment is purchased and the existing equipment is leased, unless the lease is a capital lease.

Authority G.S. 131E-177(1).

TITLE 15A - DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the DENR - Environmental Management Commission intends to, amend rules cited as 15A NCAC 2D .0405, .0409, .0503 - .0504, .1201 - .1206, .1208 - .1209, .1601; 2Q .0102 - .0103, .0107, .0304, .0306, .0309, .0401 - .0402, .0801, .0803; adopt rules cited as 15A NCAC 2D .0410, .2001 - .2005; 2Q .0314 - .0315, .0808; and repeal rules cited as 15A NCAC 2D

.1501 - .1504; 2Q .0511.
Notice of Rule-making Proceedings was published in the Register on: 15A NCAC 2D .0503 - .0504 - March 15, 1996; 15A NCAC 2D .1500 - January 2, 1997; 15A NCAC 2Q .0304, .0306, .0309, .0314 - April 15, 1997; 15A NCAC 2Q .0102, .0801, .0803 - July 15, 1997;
15A NCAC 2Q .0401 - .0402 - August 15, 1997; 15A NCAC 2D .0405, .0409 - .0410, .1201-.1206, .1208 - .1209; 2Q .0103, .0107, .0808 - February 16, 1998; 15A NCAC 2D .1501-.1504, .1601, .2001-.2005; 2Q .0315, .0511 - April 15, 1998.

Proposed Effective Date: ***April 1, 1999 -*** *15A NCAC 2D .0405, .0409 - 0410, .0503 - .0504, .1501 - .1504, .1601, .2001 - .2005; 2Q .0102 - .0103, .0107, .0401 - .0402, .0801, .0803;* ***July 1, 1999 -*** *15A NCAC 2D .1201 - .1206, .1208 - .1209; 2Q .0304, .0306, .0309, .0314 - .0315, .0511, .0808.*

A Public Hearing *will be conducted at 7:00 p.m. on August 20, 1998 at the Archdale Building, Groundfloor Hearing Room, 512 N. Salisbury Street, Raleigh, NC 27611.*

Reason for Proposed Action:
15A NCAC 2Q .0315, .0511 - *are proposed for adoption and repeal, respectively, to eliminate confusion over which procedure to follow to add or remove terms in permits to avoid Title V permitting procedures.*
15A NCAC 2D .1201 - .1206, .1208, .1209 - *are proposed for amendment to incorporate federal emission guidelines for hospital, medical, and infectious waste incinerators.*
15A NCAC 2Q .0107 - *is proposed for amendment to allow more time for the Division to make a decision concerning the treatment of confidential information and remove the provision for a preliminary decision.*
15A NCAC 2Q .0801, .0803 - *are proposed for amendment to clarify that potential emissions of hazardous air pollutants that are also volatile organic compounds may be computed using the procedures in 2Q .0803.*
15A NCAC 2Q .0401 - .0402 - *are proposed for amendment to incorporate the federal procedures and requirements of 40 CFR Part 76, Acid Rain Program.*
15A NCAC 2Q .0103 - *is proposed for amendment to add a definition for "sawmill".*
15A NCAC 2Q .0808 - *is proposed for adoption to add an exclusionary rule for peak shaving generators.*
15A NCAC 2Q .0304, .0306, .0309 - *are proposed for amendment and* ***15A NCAC 2Q .0314*** *is proposed for adoption to incorporate clarifications for the issuance of construction and operating permits.*
15A NCAC 2D .0503 - .0504 - *are proposed for amendment to add definitions for "plant site" and "indirect heat exchanger".*
15A NCAC 2Q .0102 - *is proposed for amendment to clarify permit exemptions.*
15A NCAC 2D .0405, .0409 - *are proposed for amendment and* ***15A NCAC 2D .0410*** *is proposed for adoption to implement national ambient air quality standards for ozone and particulate matter.*
15A NCAC 2D .2001 - .2005 - *are proposed for adoption,* ***15A NCAC 2D .1601*** *is proposed for amendment, and* ***15A NCAC 2D .1501 - .1504*** *are proposed for repeal to implement the requirements of transportation conformity.*

Comment Procedures: *All persons interested in these matters are invited to attend the public hearings. Any person desiring to comment for more than three minutes is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The hearing record will remain open until September 2, 1998 to receive additional written statements. Comments should be sent to and additional information concerning the hearing or the proposals may be obtained by contacting:*

Mr. Thomas Allen
Division of Air Quality
PO Box 29580
Raleigh, NC 27626-0580
(919) 733-1489 (phone)
(919) 715-7476 (fax)
thom_allen@aq.enr.state.nc.us (e-mail)

Fiscal Note: *These Rules 15A NCAC 2D .1201 - .1206, .1208 - .1209 affect the expenditures or revenues of local government funds.*

Fiscal Note: *These Rules 15A NCAC 2D .0405, .0409 - .0410, .0503 - .0504,.1501 - .1504, .1601, .2001 - .2005; 2Q .0102 - .0103, .0107, .0304, .0306, .0309, .0314 - .0315, .0401 - .0402, .0511, .0801, .0803, .0808 do not affect the expenditures or revenues of state or local government funds. These Rules do not have a substantial economic impact of at least five million dollars ($5,000,000) in a 12-month period.*

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .0400 - AMBIENT AIR QUALITY STANDARDS

.0405 OZONE

The ambient air quality standard for ozone measured by a reference method based on Appendix D of 40 CFR Part 50 and designated ~~in accordance with~~ according to 40 CFR Part 53 is ~~0.12 part~~ 0.08 parts per million ~~(235 micrograms per cubic meter).~~ (ppm), daily maximum 8-hour average. The standard is attained at an ambient air quality monitoring site when ~~the expected number of days per calendar year with maximum hourly~~ average of the annual fourth-highest daily maximum 8-hour average ozone ~~concentrations above 0.12 part per million (235 micrograms per cubic meter) is equal to or less than 1.0,~~ concentration is less than or equal to 0.08 parts per million (ppm) as determined by Appendix ~~H~~ I of 40 CFR Part 50, or equivalent methods established under 40 CFR Part 53.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3).

.0409 PM10 PARTICULATE MATTER

(a) The ambient air quality standards for PM10 particulate matter are:

(1) 150 micrograms per cubic meter (ug/m^3), 24-hour average concentration; and

(2) 50 micrograms per cubic meter (ug/m^3), annual arithmetic mean.

These standards are attained when the ~~expected number of days per calendar year with a 24-hour average concentration above 150 ug/m^3 is equal to or less than one or when the expected~~ annual arithmetic mean concentration is less than or equal to 50 ug/m^3, and when the 99th percentile 24-hour concentration is less than or equal to 150 ug/m^3, as determined ~~in accordance with~~ according to Appendix ~~K~~ N of 40 CFR Part 50.

(b) For the purpose of determining attainment of the standards in Paragraph (a) of this ~~Regulation,~~ Rule, particulate matter shall be measured in the ambient air as PM10 (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) ~~by:~~ by either:

(1) a reference method based on Appendix ~~J~~ M of 40 CFR Part 50 and designated ~~in accordance with~~ according to 40 CFR Part 53; or

(2) an equivalent method designated ~~in accordance with~~ according to 40 CFR Part 53.

Authority G.S. 143-215.3(a)(1);143-215.107(a)(3).

.0410 PM2.5 PARTICULATE MATTER

(a) The ambient air quality standards for PM2.5 particulate matter are:

(1) 15.0 micrograms per cubic meter (ug/m^3), annual arithmetic mean concentration; and

(2) 65 micrograms per cubic meter (ug/m^3), 24-hour average concentration.

These standards are attained when the annual arithmetic mean concentration is less than or equal to 15.0 ug/m^3 and when the 98th percentile 24-hour concentration is less than or equal to 65 ug/m^3, as determined according to Appendix N of 40 CFR Part 50.

(b) For the purpose of determining attainment of the standards in Paragraph (a) of this Rule, particulate matter shall be measured in the ambient air as PM2.5 (particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers) by either:

(1) a reference method based on Appendix L of 40 CFR Part 50 and designed according to 40 CFR Part 53; or

(2) an equivalent method designed according to 40 CFR Part 53.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3).

SECTION .0500 - EMISSION CONTROL STANDARDS

.0503 PARTICULATES FROM FUEL BURNING INDIRECT HEAT EXCHANGERS

(a) For the purpose of this Rule the following definitions shall apply:

(1) "Functionally dependent" means that structures, buildings or equipment are interconnected through common process streams, supply lines, flues, or stacks.

(2) "Indirect heat exchanger" means any equipment used for the alteration of the temperature of one fluid by the use of another fluid in which the two fluids are separated by an impervious surface such that there is no mixing of the two fluids.

(3) "Plant site" means any single or collection of structures, buildings, facilities, equipment, installations, or operations which:

(A) are located on one or more adjacent properties,

(B) are under common legal control, and

(C) are functionally dependent in their operations.

(b) The definition contained in Subparagraph (a)(3) of this Rule does not affect the calculation of the allowable emission rate of any indirect heat exchanger permitted prior to April 1, 1999.

(c) ~~(a)~~ With the exceptions in Rule .0536 of this Section, emissions of particulate matter from the combustion of a fuel that are discharged from any stack or chimney into the atmosphere shall not exceed:

Maximum Heat Input In Million ~~BTU/Hour~~ Btu/Hour	Allowable Emission Limit For Particulate Matter In Lb/Million ~~BTU~~ Btu
Up to and Including 10	0.60
100	0.33
1,000	0.18
10,000 and Greater	0.10

For a heat input between any two consecutive heat inputs stated in the preceding table, the allowable emissions of particulate matter shall be calculated by the equation E = 1.090 times Q to the -0.2594 power. E = allowable emission limit for particulate matter in lb/million ~~BTU.~~ Btu. Q = maximum heat input in million ~~BTU/hour.~~ Btu/hour.

(d) ~~(b)~~ This Rule applies to installations in which fuel is burned for the purpose of producing heat or power by indirect heat transfer. Fuels include those such as coal, coke, lignite, peat, natural gas, and fuel oils, but exclude wood and refuse not burned as a fuel. When any refuse, products, or by-products of a manufacturing process are burned as a fuel rather than refuse, or in conjunction with any fuel, this allowable emission limit shall apply.

(e) ~~(c)~~ For the purpose of this Rule, the maximum heat input shall be the total heat content of all fuels which are burned in a

fuel burning indirect heat exchanger, of which the combustion products are emitted through a stack or stacks. The sum of maximum heat input of all fuel burning indirect heat exchangers at a plant site which are in operation, under construction, or permitted pursuant to 15A NCAC 2Q, shall be considered as the total heat input for the purpose of determining the allowable emission limit for particulate matter for each fuel burning indirect heat exchanger. Fuel burning indirect heat exchangers constructed or permitted after February 1, 1983, shall not change the allowable emission limit of any fuel burning indirect heat exchanger whose allowable emission limit has previously been set. The removal of a fuel burning indirect heat exchanger shall not change the allowable emission limit of any fuel burning indirect heat exchanger whose allowable emission limit has previously been established. However, for any fuel burning indirect heat exchanger constructed after, or in conjunction with, the removal of another fuel burning indirect heat exchanger at the plant site, the maximum heat input of the removed fuel burning indirect heat exchanger shall no longer be considered in the determination of the allowable emission limit of any fuel burning indirect heat exchanger constructed after or in conjunction with the removal. For the purposes of this Paragraph, refuse not burned as a fuel and wood shall not be considered a fuel. For residential facilities or institutions (such as military and educational) whose primary fuel burning capacity is for comfort heat, only those fuel burning indirect heat exchangers located in the same power plant or building or otherwise physically interconnected (such as common flues, steam, or power distribution line) shall be used to determine the total heat input.

(f) ~~(d)~~ The emission limit for fuel burning equipment that burns both wood and other fuels in combination, or for wood and other fuel burning equipment that is operated such that emissions are measured on a combined basis, shall be calculated by the equation Ec = [(EW)(Qw) + (Eo)(Qo)] /Qt.

(1) Ec = the emission limit for combination or combined emission source(s) in lb/million ~~BTU.~~ Btu.

(2) Ew = plant site emission limit for wood only as determined by Rule .0504 of this Section in lb/million ~~BTU.~~ Btu.

(3) Eo = the plant site emission limit for other fuels only as determined by Paragraphs (a), (b) and (c) of this Rule in lb/million ~~BTU.~~ Btu.

(4) Qw = the actual wood heat input to the combination or combined emission source(s) in ~~BTU/hr.~~ Btu/hr.

(5) Qo = the actual other fuels heat input to the combination or combined emission source(s) in ~~BTU/hr.~~ Btu/hr.

(6) Qt = Qw + Qo and is the actual total heat input to combination or combined emission source(s) in ~~BTU/hr.~~ Btu/hr.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.0504 PARTICULATES FROM WOOD BURNING INDIRECT HEAT EXCHANGERS

(a) For the purpose of this Rule the following definitions shall apply:

(1) "Functionally dependent" means that structures, buildings or equipment are interconnected through common process streams, supply lines, flues, or stacks.

(2) "Indirect heat exchanger" means any equipment used for the alteration of the temperature of one fluid by the use of another fluid in which the two fluids are separated by an impervious surface such that there is no mixing of the two fluids.

(3) "Plant site" means any single or collection of structures, buildings, facilities, equipment, installations, or operations which:

(A) are located on one or more adjacent properties,

(B) are under common legal control, and

(C) are functionally dependent in their operations.

(b) The definition contained in Subparagraph (a)(3) of this Rule does not affect the calculation of the allowable emission rate of any indirect heat exchanger permitted prior to April 1, 1999.

(c) ~~(a)~~ Emissions of particulate matter from the combustion of wood shall not exceed:

Allowable Emission Limit For Particulate Matter In Lb/Million ~~BTU~~ Btu	Maximum Heat Input In Million ~~BTU/Hour~~ Btu/Hour
Up to and Including 10	0.70
100	0.41
1,000	0.25
10,000 and Greater	0.15

For a heat input between any two consecutive heat inputs stated in the preceding table, the allowable emissions of particulate matter shall be calculated by the equation E = 1.1698 times Q to the -0.2230 power. E = allowable emission limit for particulate matter in lb/million ~~BTU.~~ Btu. Q = Maximum heat input in million ~~BTU/hour.~~ Btu/hour.

(d) ~~(b)~~ This ~~Regulation~~ Rule applies to installations in which wood is burned for the primary purpose of producing heat or power by indirect heat transfer.

(e) ~~(c)~~ For the purpose of this ~~Regulation,~~ Rule, the heat content of wood shall be 8,000 ~~BTU~~ Btu per pound (dry-weight basis). The total of maximum heat inputs of all wood burning indirect heat exchangers at a plant site in operation, under construction, or with a permit shall be used to determine the allowable emission limit of a wood burning indirect heat exchanger. Wood burning indirect heat exchangers constructed

or permitted after February 1, 1983, shall not change the allowable emission limit of any wood burning indirect heat exchanger whose allowable emission limit has previously been set.

(f) ~~(d)~~ The emission limit for fuel burning equipment that burns both wood and other fuels in combination or for wood and other fuel burning equipment that is operated such that emissions are measured on a combination basis shall be calculated by the procedure described in Paragraph (d) of Rule .0503 of this Section.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

SECTION .1200 - CONTROL OF EMISSIONS FROM INCINERATORS

.1201 PURPOSE AND SCOPE

(a) This Section sets forth rules for the control of the emissions of air pollutants from incinerators.

(b) The rules in this Section apply to all types of incinerators as defined by 15A NCAC 2D ~~.0101(19).~~ .0101(20), including incinerators with heat recovery and industrial incinerators. ~~The rules in this Section do not apply to afterburners, flares, fume incinerators, and other similar devices used to reduce the emissions of air pollutants from processes, whose emissions shall be regulated as process emissions.~~

(c) This Section does not apply ~~to~~ to:

(1) afterburners, flares, fume incinerators, and other similar devices used to reduce emissions of air pollutants from processes, whose emissions shall be regulated as process emissions;

(2) any boilers or industrial furnaces that burn waste as a ~~fuel.~~ fuel;

~~(d)~~ (3) ~~This Section does not apply to~~ air curtain burners, which shall comply with Section .1900 of this ~~Subchapter.~~ Subchapter; or

~~(e)~~ (4) ~~This Section does not apply to~~ incinerators used to dispose of dead animals or poultry that meet the following requirements:

~~(1)~~ (A) The incinerator is located on a farm and is owned and operated by the farm owner or by the farm operator;

~~(2)~~ (B) The incinerator is used solely to dispose of animals or poultry originating on the farm where the incinerator is located;

~~(3)~~ (C) The incinerator is not charged at a rate that exceeds its design capacity; and

~~(4)~~ (D) The incinerator complies with Rules .0521 (visible emissions) and .0522 (odorous emissions) of this Subchapter.

~~(f)~~ (d) If the incinerator is used solely to cremate pets or if the emissions of all toxic air pollutants from an incinerator and associated waste handling and storage are less than the levels listed in 15A NCAC 2Q .0711, the incinerator shall be exempt from Rules .1205(f) through (p), and .1206 of this Section. Sewage sludge incinerators, sludge incinerators, ~~and~~ municipal waste combustors at small and large municipal waste combustor ~~plants~~ plants, and HMIWIs are not eligible for exemption under this Paragraph.

~~(g)~~ (e) If an incinerator can be defined as being more than one type of incinerator, then the following order shall be used to determine the standards and requirements to apply: hazardous waste incinerators, sewage sludge incinerators, sludge incinerators, municipal waste combustor at a large or small municipal waste combustor plant, HMIWIs, ~~medical waste incinerators,~~ crematory incinerators, and other incinerators.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(1),(3),(4),(5).

.1202 DEFINITIONS

For the purposes of this Section, the following definitions and those contained in 40 CFR 60, Subpart Ec, Standards of Performance for Hospital, Medical, and Infectious Waste Incinerators for Which Construction is Commenced after June 20, 1996, shall apply:

(1) "Control efficiency" means the mass of a pollutant in the waste fed to an incinerator minus the mass of that pollutant in the exit gas from the incinerator stack divided by the mass of the pollutant in the waste fed to the incinerator.

(2) "Crematory incinerator" means any incinerator located at a crematory regulated under 21 NCAC 34C that is used solely for the cremation of human remains.

(3) "Construction and demolition waste" means wood, paper, and other combustible waste resulting from construction and demolition projects except for hazardous waste and asphaltic material.

(4) ~~"Dioxane~~ "Dioxin and Furan" means tetra- through octa- chlorinated dibenzo-p-dioxins and dibenzofurans.

(5) "Hazardous waste incinerator" means an incinerator regulated under 15A NCAC 13A .0001 through .0014, 40 CFR 264.340 to 264.351, Subpart O, or 265.340 to 265.352, Subpart O.

(6) "Hospital, medical and infectious waste incinerator (HMIWI)" means any device that combusts any amount of hospital, medical and infectious waste in which construction was commenced on or before June 20, 1996, except:

(a) any HMIWI required to have a permit under Section 3005 of the Solid Waste Disposal Act;

(b) any pyrolysis unit;

(c) any cement kiln firing hospital waste or medical and infectious waste;

(d) any physical or operational change made to an existing HMIWI solely for the purpose of complying with the emission guidelines for HMIWIs in Rule .1205 of this Section. These physical or operational changes are not considered a modification and do not result in an existing HMIWI becoming subject to the provisions of 40 CFR Part 60, Subpart Ec;

(e) any HMIWI during periods when only pathological waste, low-level radioactive waste, or chemotherapeutic waste is burned, provided that the owner or operator of the

HMIWI:

(i) notifies the Director of an exemption claim; and

(ii) keeps records on a calendar quarter basis of the periods of time when only pathological waste, low-level radioactive waste, or chemotherapeutic waste is burned; or

(f) any co-fired HMIWI, if the owner or operator of the co-fired HMIWI:

(i) notifies the Director of an exemption claim;

(ii) provides an estimate of the relative weight of hospital, medical and infectious waste, and other fuels or wastes to be combusted; and

(iii) keeps records on a calendar quarter basis of the weight of hospital, medical and infectious waste combusted, and the weight of all other fuels and wastes combusted at the co-fired HMIWI.

(7) "Large HMIWI" means:

(a) Except as provided in Sub-item (b) of this Item:

(i) a HMIWI whose maximum design waste burning capacity is more than 500 pounds per hour;

(ii) a continuous or intermittent HMIWI whose maximum charge rate is more than 500 pounds per hour; or

(iii) a batch HMIWI whose maximum charge rate is more than 4,000 pounds per day.

(b) The following are not large HMIWIs:

(i) a continuous or intermittent HMIWI whose maximum charge rate is less than or equal to 500 pounds per hour; or

(ii) a batch HMIWI whose maximum charge rate is less than or equal to 4,000 pounds per day.

(8) "Hospital waste" means discards generated at a hospital, except unused items returned to the manufacturer. The definition of hospital waste does not include human corpses, remains, and anatomical parts that are intended for interment or cremation.

~~(6)~~ (9) "Large municipal waste combustor plant" means a municipal waste combustor plant with a municipal waste combustor aggregate plant capacity that is greater than 250 tons per day of municipal solid waste.

~~(7) "Medical waste incinerator" means any incinerator regulated under 15A NCAC 13B .1207(3).~~

(10) "Medical and Infectious waste" means any waste generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals that is listed in Sub-items (a)(i) through (vii) of this Item.

(a) The definition of medical and infectious waste includes:

(i) cultures and stocks of infectious agents and associated biologicals, including:

(A) cultures from medical and pathological laboratories;

(B) cultures and stocks of infectious agents from research and industrial laboratories;

(C) wastes from the production of biologicals;

(D) discarded live and attenuated vaccines; and

(E) culture dishes and devices used to transfer, inoculate, and mix cultures;

(ii) human pathological waste, including tissues, organs, and body parts and body fluids that are removed during surgery or autopsy, or other medical procedures, and specimens of body fluids and their containers;

(iii) human blood and blood products including:

(A) liquid waste human blood;

(B) products of blood;

(C) items saturated or dripping with human blood; or

(D) items that were saturated or dripping with human blood that are now caked with dried human blood including serum, plasma, and other blood components, and their containers, which were used or intended for use in either patient care, testing and laboratory analysis or the development of pharmaceuticals. Intravenous bags are also included in this category;

(iv) sharps that have been used in animal or human patient care or treatment or in medical, research, or industrial laboratories, including hypodermic needles, syringes (with or without the attached needle), pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, and culture dishes (regardless of presence of infectious agents). Also included are other types of broken or unbroken glassware that were in contact with infectious agents, such as used slides and cover slips;

(v) animal waste including contaminated animal carcasses, body parts, and bedding of animals that were known to have been exposed to infectious agents during research (including research in veterinary hospitals), production of

biologicals or testing of pharmaceuticals;

(vi) isolation wastes including biological waste and discarded materials contaminated with blood, excretions, exudates, or secretions from humans who are isolated to protect others from certain highly communicable diseases, or isolated animals known to be infected with highly communicable diseases; and

(vii) unused sharps including the following unused or discarded sharps:

(A) hypodermic needles;

(B) suture needles;

(C) syringes; and

(D) scalpel blades.

(b) The definition of medical and infectious waste does not include:

(i) hazardous waste identified or listed under 40 CFR Part 261;

(ii) household waste, as defined in 40 CFR Part 261.4(b)(1);

(iii) ash from incineration of medical and infectious waste, once the incineration process has been completed;

(iv) human corpses, remains, and anatomical parts that are intended for interment or cremation; and

(v) domestic sewage materials identified in 40 CFR 261.4(a)(1).

(11) "Medium HMIWI" means:

(a) Except as provided in Sub-item (b) of this Item:

(i) a HMIWI whose maximum design waste burning capacity is more than 200 pounds per hour but less than or equal to 500 pounds per hour;

(ii) a continuous or intermittent HMIWI whose maximum charge rate is more than 200 pounds per hour but less than or equal to 500 pounds per hour; or

(iii) a batch HMIWI whose maximum charge rate is more than 1,600 pounds per day but less than or equal to 4,000 pounds per day.

(b) The following are not medium HMIWIs:

(i) a continuous or intermittent HMIWI whose maximum charge rate is less than or equal to 200 pounds per hour or more than 500 pounds per hour; or

(ii) a batch HMIWI whose maximum charge rate is more than or equal to 4,000 pounds per day or less than or equal to 1,600 pounds per day.

~~(8)~~ (12) "Municipal waste combustor (MWC) or municipal waste combustor unit" means a municipal waste combustor as defined in 40 CFR 60.51b.

~~(9)~~ (13) "Municipal waste combustor plant" means one or more municipal waste combustor units at the same location for which construction, modification, or reconstruction commenced on or before September 20, 1994.

~~(10)~~ (14) "Municipal waste combustor plant capacity" means the aggregate municipal waste combustor unit capacity of all municipal waste combustor units at a municipal waste combustor plant for which construction, modification, or reconstruction commenced on or before September 20, 1994.

~~(11)~~ (15) "Municipal-type solid waste (MSW)" means municipal-type solid waste defined in 40 CFR 60.51b.

~~(12)~~ (16) "POTW" means a publicly owned treatment works as defined in 40 CFR 501.2.

~~(13)~~ (17) "Same Location" means the same or contiguous property that is under common ownership or control including properties that are separated only by a street, road, highway, or other public right-of-way. Common ownership or control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, subdivision, or any combination thereof including any municipality or other governmental unit, or any quasi-governmental authority (e.g., a public utility district or regional waste disposal authority).

~~(14)~~ (18) "Sewage sludge incinerator" means any incinerator regulated under 40 CFR Part 503, Subpart E.

~~(15)~~ (19) "Sludge incinerator" means any incinerator regulated under ~~Paragraph (a)(4) of~~ Rule .1110 of this Subchapter but not under 40 CFR Part 503, Subpart E.

(20) "Small HMIWI" means:

(a) Except as provided in Sub-item (b) of this Item:

(i) a HMIWI whose maximum design waste burning capacity is less than or equal to 200 pounds per hour;

(ii) a continuous or intermittent HMIWI whose maximum charge rate is less than or equal to 200 pounds per hour; or

(iii) a batch HMIWI whose maximum charge rate is less than or equal to 1,600 pounds per day.

(b) The following are not small HMIWIs:

(i) a continuous or intermittent HMIWI whose maximum charge rate is more than 200 pounds per hour; or

(ii) a batch HMIWI whose maximum charge rate is more than 1,600 pounds per day.

~~(16)~~ (21) "Small municipal waste combustor plant" means a municipal waste combustor plant with a municipal waste combustor plant capacity that is greater than 38.8 tons per day but not more than 250 tons per day of municipal solid waste.

(22) "Small remote HMIWI" means any small HMIWI which is located more than 50 miles from the boundary of the nearest Standard Metropolitan

Statistical Area (SMSA) and which burns less than 2,000 pounds per week of hospital, medical and infectious waste. The 2,000 pound per week limitation does not apply during performance tests.

(23) "Standard Metropolitan Statistical Area (SMSA)" means any area listed in OMB Bulletin No. 93-17, entitled "Revised Statistical Definitions for Metropolitan Areas" dated July 30, 1993. The referenced document cited by this Item is hereby incorporated by reference and does not include subsequent amendments or editions. A copy of this document may be obtained from the Division of Air Quality, PO Box 29580, Raleigh, NC 27626-0580 at a cost of ten cents ($0.10) per page or may be obtained through the internet at "http://www.census.gov/population/estimates/metro-city/93mfips.txt".

~~(17)~~ (24) "Total hydrocarbons" means the organic compounds in the stack exit gas from a sewage sludge incinerator measured using a flame ionization detection instrument referenced to propane.

Authority G.S. 143-213; 143-215.3(a)(1).

.1203 TEST METHODS AND PROCEDURES

(a) The test methods and procedures described in Rule .0501 of this Subchapter and in 40 CFR Part 60 Appendix A and 40 CFR Part 61 Appendix B shall be used to determine compliance with emission rates. The test method for determining metals emissions from stationary combustion sources, commonly called Method 5 (interim), published by the US Environmental Protection Agency on August 28, 1989, shall be used to determine emission rates for metals. Method 5 (interim) shall be used to sample for chromium(VI), and SW 846 Method 0013 shall be used for the analysis. A copy of Method 5 (interim) and SW 846 Method 0013 may be obtained from the North Carolina Division of Air Quality.

(b) The Director may require the owner or operator to test his incinerator to demonstrate compliance with the emission standards in Rule .1205 of this Section.

(c) For the emission standards in Rule ~~.1205(b)(5)(A), (b)(5)(B),~~ .1205(b)(7)(A), (b)(7)(B), (f), and (g) of this Section, compliance shall be determined by averaging emissions over a one-hour period.

(d) The owner or operator of a sewage sludge incinerator shall perform testing to determine pollutant control efficiencies of any pollution control equipment and obtain information on operational parameters, including combustion temperature, to be placed in an air quality permit.

(e) The owner or operator of a municipal waste combustor at a small or large municipal waste combustor plant shall do performance testing in accordance with 40 CFR Part 60.58b. For municipal waste combustor at large municipal waste combustor plants that achieve a dioxin and furan emission level less than or equal to 15 nanograms per dry standard cubic meter total mass, corrected to seven percent oxygen, the performance testing shall be performed in accordance with the testing schedule specified in 40 CFR 60.58b(g)(5)(iii). For municipal waste combustor at small municipal waste combustor plants that achieve a dioxin and furan emission level less than or equal to 30.0 nanograms per dry standard cubic meter total mass, corrected to seven percent oxygen, the performance testing shall be performed in accordance with the testing schedule specified in 40 CFR 60.58b(g)(5)(iii).

(f) Referenced document SW-846 "Test Methods for Evaluating Solid Waste", Third Edition, cited by this Rule is hereby incorporated by reference and does not include subsequent amendments or editions. A copy of this document is available for inspection at the North Carolina Department of ~~Environment, Health,~~ Environment and Natural Resources Library located at 512 North Salisbury Street, Raleigh, NC 27603. Copies of this document may be obtained through the US Government Printing Office, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250-7954, or by calling (202) 783-3238. The cost of this document is three hundred nineteen dollars ($319.00).

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.1204 REPORTING AND RECORDKEEPING

(a) The reporting and recordkeeping requirements of Rule .1105 of this Subchapter shall apply to all incinerators in addition to any reporting and recordkeeping requirements that may be contained in any other rules.

(b) The owner or operator of an incinerator, except an incinerator meeting the requirements of 15A NCAC 2D ~~.1201(e),~~ .1201(c)(4), shall maintain and operate a continuous temperature monitoring and recording device for the primary chamber and, where there is a secondary chamber, for the secondary chamber. The Director may require a temperature monitoring device for incinerators meeting the requirements of 15A NCAC 2D ~~.1201(e).~~ .1201(c)(4). The owner or operator of an incinerator that has installed air pollution abatement equipment to reduce emissions of hydrogen chloride shall install, operate, and maintain continuous monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems. The Director shall require the owner or operator of an incinerator with a permitted charge rate of 750 pounds per hour or more to install, operate, and maintain continuous monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the incinerator. The Director may require the owner or operator of an incinerator with a permitted charge rate of less than 750 pounds per hour to install, operate, and maintain monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the incinerator.

(c) In addition to the requirements of Paragraphs (a) and (b) of this Rule, the owner or operator of a sewage sludge incinerator shall:

(1) install, operate, and maintain, for each incinerator, continuous emission monitors to determine the following:

(A) total hydrocarbon concentration of the incinerator stack exit gas in accordance with 40 CFR 503.45(a) unless the requirements for continuously monitoring carbon monoxide as

provided in 40 CFR 503.40(c) are satisfied:

(B) oxygen concentration of the incinerator stack exit gas; and

(C) moisture content of the incinerator stack exit gas;

(2) monitor the concentrations of beryllium and mercury from the sludge fed to the incinerator at least as frequently as required under Rule .1110 of this Subchapter but in no case less than once per year;

(3) monitor the concentrations of arsenic, cadmium, chromium, lead, and nickel in the sewage sludge fed to the incinerator at least as frequently as required under 40 CFR 503.46(a)(2) and (3);

(4) determine mercury emissions by use of ~~Method 105~~ Method 101 or 101A of 40 CFR Part 61, Appendix B, where applicable to 40 CFR 61.55(a);

(5) maintain records of all material required under Rule .1203 and .1204 of this Section in accordance with 40 CFR 503.47; and

(6) for class I sludge management facilities (as defined in 40 CFR 503.9), POTWs (as defined in 40 CFR 501.2) with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve a population of 10,000 people or greater, submit the information recorded in Subparagraph (c)(4) of this Rule to the Director on or before February 19 of each year.

(d) In addition to the requirements of Paragraphs (a) and (b) of this Rule, the owner or operator of a small or large municipal waste combustor plant shall:

(1) install, operate, and maintain, for each municipal waste combustor, continuous emission monitors to determine the following:

(A) opacity in accordance with 40 CFR 60.58b(c).

(B) sulfur dioxide in accordance with 40 CFR 60.58b(e).

(C) nitrogen dioxide in accordance with 40 CFR 60.58b(h). (This requirement applies only to large municipal waste combustor plants).

(2) maintain records of the information listed in 40 CFR 60.59b, Paragraphs (d)(1) through (d)(15) for a period of at least five years.

(3) following the initial compliance tests as required under Rule .1203 of this Section, submit the information specified in 40 CFR 60.59b, Paragraphs (f)(1) through (f)(6), in the initial performance test report.

(4) following the first year of municipal combustor operation, submit an annual report including the information specified in 40 CFR 60.59b, Paragraphs (g)(1) through (g)(4), as applicable, no later than February 1 of each year following the calendar year in which the data were collected. Once the unit is subject to permitting requirements under 15A NCAC 2Q .0500, Title V Procedures, the owner or operator of an affected facility must submit these reports semiannually.

(5) submit a semiannual report that includes information specified in 40 CFR 60.59b, Paragraphs (h)(1) through (h)(5), for any recorded pollutant or parameter that does not comply with the pollutant or parameter limit specified in this Section, according to the schedule specified in 40 CFR 60.59b(h)(6).

(e) In addition to the requirements of Paragraphs (a) and (b) of this Rule, the owner or operator of a HMIWI shall comply with the recording and recordkeeping requirements listed in 40 CFR Part 60.58c(b), (c), (d), (e), and (f), excluding Subparts (b)(2)(ii) and (b)(7).

(f) In addition to the requirements of Paragraphs (a), (b), and (e) of this Rule, the owner or operator of a small remote HMIWI shall:

(1) maintain records of the annual equipment inspections, any required maintenance, and any repairs not completed within 10 days of an inspection;

(2) submit an annual report containing information recorded in Subparagraph (1) of this Paragraph to the Director no later than 60 days following the year in which data were collected. Subsequent reports shall be sent no later than 12 calendar months following the previous report. The report shall be signed by the HMIWI manager; and

(3) submit the reports required by Subparagraphs (1) and (2) of this Paragraph to the Director semiannually once the HMIWI is subject to the permitting procedures of 15A NCAC 2Q .0500, Title V Procedures.

(g) Waste Management Guidelines. The owner or operator of a HMIWI shall comply with the requirements of 40 CFR Part 60.55c for the preparation and submittal of a waste management plan.

(h) Except as provided in Paragraph (i) of this Rule, the owner or operator of any HMIWI shall comply with the monitoring requirements in 40 CFR Part 60.57c.

(i) The owner or operator of any small remote HMIWI shall:

(1) install, calibrate, maintain, and operate a device for measuring and recording the temperature of the secondary chamber on a continuous basis, the output of which shall be recorded, at a minimum, once every minute throughout operation.

(2) install, calibrate, maintain, and operate a device which automatically measures and records the date, time, and weight of each charge fed into the HMIWI.

(3) obtain monitoring data at all times during HMIWI operation except during periods of monitoring equipment malfunction, calibration, or repair. At a minimum, valid monitoring data shall be obtained for 75 percent of the operating hours per calendar quarter that the HMIWI is combusting hospital, medical and infectious waste.

~~(e)~~ (j) All monitoring devices and systems required by this Rule shall be subject to a quality assurance program approved by the Director. Such quality assurance program shall include procedures and frequencies for calibration, standards traceability, operational checks, maintenance, auditing, data validation, and a schedule for implementing the quality assurance program.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4),(5).

.1205 EMISSION STANDARDS

(a) The emission standards in this Rule apply to all incinerators except where Rule .0524, .1110, or .1111 of this Subchapter applies except that Subparagraphs (p)(2) and (4) of this Rule shall control in any event.

(b) Particulate matter.

(1) Hazardous waste incinerators shall meet the particulate matter requirements of 40 CFR 264.343(c).

(2) The emissions of particulate matter from each municipal waste combustor located at a small municipal waste combustor plant shall not exceed 70 milligrams per dry standard cubic meter, corrected to seven percent oxygen.

(3) The emissions of particulate matter from each municipal waste combustor located at a large municipal waste combustor plant shall not exceed 27 milligrams per dry standard cubic meter corrected to seven percent oxygen.

(4) Conical incinerators covered by Rule .0523 of this Subchapter shall comply with that rule instead of this Paragraph.

(5) The emissions of particulate matter from a HMIWI shall not exceed:

Incinerator Size	Allowable Emission Rate (mg/dscm) [corrected to seven percent oxygen]
Small	115
Medium	69
Large	34

(6) The emissions of particulate matter from any small remote HMIWI shall not exceed 197 milligrams per dry standard cubic meter, corrected to seven percent oxygen.

~~(5)~~ (7) Any incinerators not covered under Subparagraphs ~~(1), (2), (3), or (4)~~ (1) through (6) of this Paragraph shall comply with one of the following emission standards for particulate matter:

(A) The emission of particulate matter from any stack or chimney of an incinerator shall not exceed:

Refuse Charge (lb/hour) ~~In Lb/Hour~~	Allowable Emission Rate (lb/hour) ~~For Particulate Matter In Lb/Hour~~
0 to 100	0.2
200	0.4
500	1.0
1,000	2.0
2,000 and Above	4.0

For a refuse charge between any two consecutive rates stated in the preceding table, the allowable emissions rate for particulate matter shall be calculated by the equation E=0.002P. E=allowable emission rate for particulate matter in lb/hour. P=refuse charge in lb/hour.

(B) Instead of meeting the standards in Part ~~(b)(5)(A)~~ (7)(A) of this ~~Rule,~~ Paragraph, the owner or operator of an incinerator may choose to limit particulate emissions from the incinerator to 0.08 grains per dry standard cubic foot corrected to 12 percent carbon dioxide. In order to choose this option, the owner or operator of the incinerator shall demonstrate that the particulate ambient air quality standards will not be violated. To correct to 12 percent carbon dioxide, the measured concentration of particulate matter is multiplied by 12 and divided by the measured percent carbon dioxide.

(c) Sulfur dioxide.

(1) The emissions of sulfur dioxide from each municipal waste combustor located at a small municipal waste

combustor plant shall be reduced by at least 50 percent by weight or volume or to no more than 80 parts per million by volume corrected to seven percent oxygen (dry basis), whichever is less stringent. Compliance with this emission limit is based on a 24-hour daily geometric mean.

(2) The emissions of sulfur dioxide from each municipal waste combustor located at a large municipal waste combustor plant shall be reduced by at least 75 percent by weight or volume or to no more than 31 parts per million by volume corrected to seven percent oxygen (dry basis), whichever is less stringent. Compliance with this emission limit is based on a 24-hour daily geometric mean.

(3) The emissions of sulfur dioxide from any HMIWI shall not exceed 55 parts per million corrected to seven percent oxygen (dry basis).

~~(3)~~ (4) Any incinerator not covered under Subparagraphs ~~(1) and (2)~~ (1) through (3) of this Paragraph shall comply with Rule .0516 of this Subchapter.

(d) Visible emissions.

(1) The emission limit of opacity from each municipal waste combustor located at a small or large municipal waste combustor plant shall not exceed 10 percent (6-minute average).

(2) Air curtain incinerators shall comply with Rule .1904 of this Subchapter.

(3) On and after the date on which the initial performance test is completed, the owner or operator of any HMIWI shall not cause to be discharged into the atmosphere from the stack of the HMIWI any gases that exhibit greater than 10 percent opacity (6-minute block average).

~~(3)~~ (4) Any incinerator not covered under Subparagraphs ~~(1) and (2)~~ (1) through (3) of this Paragraph shall comply with Rule .0521 of this Subchapter.

(e) Odorous emissions. Incinerators shall comply with Rule .0522 of this Subchapter.

(f) Hydrogen chloride.

(1) The emissions of hydrogen chloride from each municipal waste combustor at small municipal waste combustor plants shall be reduced by at least 50 percent by weight or volume or to no more than 250 parts per million by volume corrected to seven percent oxygen (dry basis), whichever is less stringent.

(2) The emissions of hydrogen chloride from each municipal waste combustor at large municipal waste combustor plants shall be reduced by at least 95 percent by weight or volume or to no more than 31 parts per million by volume, corrected to seven percent oxygen (dry basis), whichever is less stringent.

(3) Hazardous waste incinerators shall meet the hydrogen chloride emissions requirements of 40 CFR 264.343(b).

(4) The emissions of hydrogen chloride from any small, medium, or large HMIWI shall be reduced by at least 93 percent by weight or volume or to no more than 100 parts per million by volume corrected to seven percent oxygen (dry basis), whichever is less stringent.

(5) The emissions of hydrogen chloride from any small remote HMIWI shall not exceed 3100 parts per million by volume corrected to seven percent oxygen (dry basis).

~~(4)~~ (6) Emissions of hydrogen chloride from all other incinerators shall not exceed four pounds per hour unless it is reduced by at least 90 percent by weight or to no more than 50 parts per million by volume corrected to seven percent oxygen (dry basis).

(g) Mercury emissions.

(1) Emissions of mercury from each municipal waste combustor at a small or large municipal waste combustor plant shall be reduced by at least 85 percent by weight or shall not exceed 0.08 milligrams per dry standard cubic meter, corrected to seven percent oxygen, whichever is less stringent.

(2) Emissions of mercury from sludge incinerators and sewage sludge incinerators are regulated under 15A NCAC 2D .1110.

(3) Emissions of mercury from any small, medium, or large HMIWI shall be reduced by at least 85 percent by weight or shall not exceed 0.55 milligrams per dry standard cubic meter, corrected to seven percent oxygen, whichever is less stringent.

(4) Emissions of mercury from any small remote HMIWI shall not exceed 7.5 milligrams per dry standard cubic meter, corrected to seven percent oxygen.

~~(3)~~ (5) Emissions of mercury and mercury compounds from the stack or chimney of a hazardous waste incinerator ~~incinerator, medical waste incinerator,~~ or any other type incinerator not identified in Subparagraphs (g)(1) through (g)(4) of this Rule shall not exceed 0.032 pounds per hour.

(h) Beryllium Emissions. Beryllium emissions from sludge incinerators and sewage sludge incinerators shall comply with 15A NCAC .1110 of this Subchapter.

(i) Lead Emissions.

(1) Emissions of lead from each municipal waste combustor at a small municipal waste combustor plant shall not exceed 1.6 milligrams per dry standard cubic meter, corrected to seven percent oxygen.

(2) Emissions of lead from each municipal waste combustor at a large municipal waste combustor plant shall not exceed 0.49 milligrams per dry standard cubic meter, corrected to seven percent oxygen.

(3) The daily concentration of lead in sewage sludge fed to a sewage sludge incinerator shall meet the requirements specified in 40 CFR 503.43(c).

(4) Emissions of lead from any small, medium, or large HMIWI shall be reduced by at least 70 percent by weight or shall not exceed 1.2 milligrams per dry standard cubic meter, corrected to seven percent oxygen, whichever is less stringent.

(5) Emissions of lead from any small remote HMIWI shall not exceed 10 milligrams per dry standard cubic

meter, corrected to seven percent oxygen.

(j) Cadmium Emissions.

(1) Emissions of cadmium from each municipal waste combustor at a small municipal waste combustor plant shall not exceed 0.10 milligrams per dry standard cubic meter, corrected to seven percent oxygen.

(2) Emissions of cadmium from each municipal waste combustor at a large municipal waste combustor plant shall not exceed 0.040 milligrams per dry standard cubic meter, corrected to seven percent oxygen.

(3) Emissions of cadmium from any small, medium, or large HMIWI shall be reduced by at least 65 percent by weight or shall not exceed 0.16 milligrams per dry standard cubic meter, corrected to seven percent oxygen, whichever is less stringent.

(4) Emissions of cadmium from any small remote HMIWI shall not exceed 4 milligrams per dry standard cubic meter, corrected to seven percent oxygen.

(k) Other Metal Emissions. The daily concentration of arsenic, cadmium, chromium, and nickel in sewage sludge fed to a sewage sludge incinerator shall meet the requirements specified in 40 CFR 503.43(d).

(l) The owner or operator of an incinerator shall demonstrate compliance with Section .1100 of this Subchapter in accordance with 15A NCAC 2Q .0700.

(m) Dioxins and Furans.

(1) The emissions of dioxins and furans from each municipal waste combustor located at a small municipal waste combustor plant shall not exceed 125 nanograms per dry standard cubic meter (total mass) corrected to seven percent oxygen.

(2) The emissions of dioxins and furans from each municipal waste combustor located at a large municipal waste combustor plant shall not exceed:

(A) 60 nanograms per dry standard cubic meter (total mass) corrected to seven percent oxygen for facilities that employ an electrostatic precipitator-based emission control system, or

(B) 30 nanograms per dry standard cubic meter (total mass) corrected to seven percent oxygen for facilities that do not employ an electrostatic precipitator-based emission control system.

(3) The emissions of dioxins and furans from any small, medium, or large HMIWI shall not exceed 125 nanograms per dry standard cubic meter total dioxins/furans, corrected to seven percent oxygen or 2.3 nanograms per dry standard cubic meter (toxic equivalency), corrected to seven percent oxygen.

(4) The emissions of dioxins and furans from any small remote HMIWI shall not exceed 800 nanograms per dry standard cubic meter total dioxins/furans, corrected to seven percent oxygen or 15 nanograms per dry standard cubic meter (toxic equivalency), corrected to seven percent oxygen.

(n) Nitrogen oxide.

(1) The emissions of nitrogen oxide from each municipal waste combustor located at a large municipal waste combustor plant shall not exceed the emission limits in Table 1 of Paragraph (d) of 40 CFR 60.33b. Nitrogen oxide emissions averaging is allowed as specified in Paragraphs (d)(1)(i) through (d)(1)(v) of 40 CFR 60.33b. Nitrogen oxide emissions control is not required for municipal waste combustors located at small municipal waste combustor plants.

(2) The emissions of nitrogen oxides from any HMIWI shall not exceed 250 parts per million by volume corrected to seven percent oxygen (dry basis).

(o) Fugitive ash.

(1) On or after the date on which the initial performance test is completed, no owner or operator of a municipal waste combustor located at a small or large municipal waste combustor plant shall cause to be discharged to the atmosphere visible emissions of combustion ash from an ash conveying system (including conveyor transfer points) in excess of five percent of the observation period (i.e., nine minutes per three-hour period), as determined by EPA Reference Method 22 observations as specified in 40 CFR 60.58b(k), except as provided in Subparagraphs (2) and (3) of this Paragraph.

(2) The emission limit specified in Subparagraph (1) of this Paragraph covers visible emissions discharged to the atmosphere from buildings or enclosures, not the visible emissions discharged inside of the buildings or enclosures, of ash conveying systems.

(3) The provisions specified in Subparagraph (1) of this Paragraph do not apply during maintenance and repair of ash conveying systems.

(p) Ambient standards.

(1) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following ambient air quality standards, which are an annual average, in milligrams per cubic meter at 77° F (25° C) and 29.92 inches (760 mm) of mercury pressure shall apply aggregately to all incinerators at a facility:

(A)	arsenic and compounds	2.3×10^{-7}
(B)	beryllium and compounds	4.1×10^{-6}
(C)	cadmium and compounds	5.5×10^{-6}
(D)	chromium(VI) and compounds	8.3×10^{-8}

(2) When Subparagraph (1) of this Paragraph and either Rule .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant shall apply, notwithstanding provisions of Rule .0524, .1110, or .1111 of this Subchapter to the contrary.

(3) The owner or operator of a facility with incinerators shall demonstrate compliance with the ambient standards in Parts (1)(A) through (D) of this Paragraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the requirements of Rule .0533 of this Subchapter.

(4) The emission rates computed or used under Subparagraph (3) of this Paragraph that demonstrate compliance with the ambient standards under

Subparagraph (1) of this Paragraph shall be placed in the permit for the facility with incinerators as their allowable emission limits unless Rule .0524, .1110 or .1111 of this Subchapter requires more restrictive rates.

(q) Carbon Monoxide. The emissions of carbon monoxide from any HMIWI shall not exceed 40 parts per million by volume, corrected to seven percent oxygen (dry basis).

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3),(4),(5).

.1206 OPERATIONAL STANDARDS

(a) The operational standards in this Rule do not apply to incinerators where operational standards in Rule .0524, .1110, or .1111 of this Subchapter apply.

(b) Hazardous waste incinerators. Hazardous waste incinerators shall comply with 15A NCAC 13A .0001 through .0014, which are administered and enforced by the Division of Waste Management.

~~(c) Medical waste incinerators. Medical waste incinerators shall meet the following requirements:~~

~~(1) The secondary chamber temperature shall be at least 1800°F.~~

~~(2) Gases generated by the combustion shall be subjected to a minimum temperature of 1800°F for a period of not less than one second.~~

~~Medical waste incinerators shall comply with 15A NCAC 13B .1207(3) and any other pertinent parts of 15A NCAC 13B .1200, which are administered and enforced by the Division of Waste Management.~~

(c) Hospital, Medical and Infectious Waste Incinerators. Each small remote HMIWI shall have an initial equipment inspection by July 1, 2000, and an annual inspection each year thereafter.

(1) At a minimum, the inspection shall include all the elements listed in 40 CFR 60.36e(a)(1)(i) through (xvii).

(2) Any necessary repairs found during the inspection shall be completed within 10 operating days of the inspection unless the owner or operator submits a written request to the Director for an extension of the 10 operating day period. The Director shall grant the extension if:

(A) the owner or operator of the small remote HMIWI demonstrates that achieving compliance by the time allowed under this Subparagraph is not feasible, and

(B) the Director does not extend the time allowed for compliance by more than 30 days following the receipt of the written request.

(d) The owner or operator of any HMIWI, except small remote HMIWI, subject to this Section shall comply with the compliance and performance testing requirements of 40 CFR Part 60.56c, excluding the fugitive emissions testing requirements under 60.56c(b)(12) and (c)(3).

(e) The owner or operator of any small remote HMIWI shall comply the following compliance and performance testing requirements:

(1) conduct the performance testing requirements in 40 CFR 60.56c(a), (b)(1) through (b)(9), (b)(11) (mercury only), and (c)(1). The 2,000 pound per week limitation does not apply during performance tests;

(2) establish maximum charge rate and minimum secondary chamber temperature as site-specific operating parameters during the initial performance test to determine compliance with applicable emission limits; and

(3) following the date on which the initial performance test is completed, ensure that the HMIWI does not operate above the maximum charge rate or below the minimum secondary chamber temperature measured as three hour rolling averages, calculated each hour as the average of all previous three operating hours, at all times except during periods of start-up, shut-down and malfunction. Operating parameter limits do not apply during performance tests. Operation above the maximum charge rate or below the minimum secondary chamber temperature shall constitute a violation of the established operating parameters.

(f) Except as provided in Paragraph (g) of this Rule, operation of the HMIWI above the maximum charge rate and below the minimum secondary temperature, each measured on a three hour rolling average, simultaneously shall constitute a violation of the PM, CO, and dioxin/furan emission limits.

(g) The owner or operator of a HMIWI may conduct a repeat performance test within 30 days of violation of applicable operating parameters to demonstrate that the HMIWI is not in violation of the applicable emission limits. Repeat performance tests conducted pursuant to this Paragraph must be conducted using the identical operating parameters that indicated a violation under Paragraph (f) of this Rule.

~~(d)~~ (h) Municipal waste combustor plants. Each municipal waste combustor located at a small or large municipal waste combustor plant shall meet the following operational ~~standard:~~ standards:

(1) The concentration of carbon monoxide at the combustor outlet shall not exceed the concentration in Table 3 of Paragraph (a) of 40 CFR 60.34b. The combustor technology named in this table is defined in 40 CFR 60.51b.

(2) The load level shall not exceed 110 percent of the maximum demonstrated municipal waste combustor unit load, except as specified in Paragraphs (b)(1) and (b)(2) of 40 CFR 60.53b. The maximum demonstrated municipal waste combustor unit load is defined in 40 CFR 60.51b and the averaging time is specified under 40 CFR 60.58b(i).

(3) The temperature at which the combustor operates, measured at the particulate matter control device inlet, shall not exceed 63° ~~Fahrenheit~~ F above the maximum demonstrated particulate matter control device temperature, except as specified in Paragraphs (c)(1) and (c)(2) of 40 CFR 60.53b. The maximum demonstrated particulate matter control device temperature is defined in 40 CFR 60.51b and the

averaging time is specified under 40 CFR 60.58b(i).

~~(e)~~ (i) Sludge incinerators. The combustion temperature in a sludge incinerator shall not be less than 1200°F. The maximum oxygen content of the exit gas from a sludge incinerator stack shall be:

(1) 12 percent (dry basis) for a multiple hearth sludge incinerator,

(2) seven percent (dry basis) for a fluidized bed sludge incinerator,

(3) nine percent (dry basis) for an electric sludge incinerator, and

(4) 12 percent (dry basis) for a rotary kiln sludge incinerator.

~~(f)~~ (j) Sewage sludge incinerators.

(1) The maximum combustion temperature for a sewage sludge incinerator shall be placed in the permit and based on information obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies.

(2) The values for the operational parameters for the sewage sludge incinerator air pollution control device(s) shall be placed in the permit and be based on information obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies.

(3) The monthly average concentration for total hydrocarbons, or carbon monoxide as provided in 40 CFR 503.40(c), in the exit gas from a sewage sludge incinerator stack, corrected to zero percent moisture and seven percent oxygen as specified in 40 CFR 503.44, shall not exceed 100 parts per million on a volumetric basis using the continuous emission monitor required in Rule .1204(c)(1) of this Section.

~~(g)~~ (k) Crematory incinerators. Gases generated by the combustion shall be subjected to a minimum temperature of 1600°F for a period of not less than one second.

~~(h)~~ (l) Other incinerators. All incinerators not covered under Paragraphs (a) through ~~(g)~~ (k) of this Rule shall meet the following requirement: Gases generated by the combustion shall be subjected to a minimum temperature of 1800°F for a period of not less than one second. The temperature of 1800°F shall be maintained at least 55 minutes out of each 60-minute period, but at no time shall the temperature go below 1600°F.

~~(i)~~ (m) Except during start-up where the procedure has been approved in accordance with Rule .0535(g) of this Subchapter, waste material shall not be loaded into any incinerators covered under Paragraph ~~(c), (d), (g), or (i)~~ (h), (k), or (l) of this Rule when the temperature is below the minimum required temperature. Start-up procedures may be determined on a case-by-case basis in accordance with Rule .0535(g) of this Subchapter. Incinerators covered under Paragraph ~~(c), (d), (g), or (i)~~ (h), (k), or (l) of this Rule shall have automatic auxiliary burners that are capable of maintaining the required minimum temperature in the secondary chamber excluding the heat content of the wastes.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

.1208 OPERATOR TRAINING AND CERTIFICATION

(a) Municipal Waste Combustors.

(1) By January 1, 2000, or six months after the date of startup of a municipal waste combustor located at a small municipal waste combustor plant, whichever is later, and by July 1, 1999 or six months after the date of startup of a municipal waste combustor located at a large municipal waste combustor plant, whichever is later:

~~(1)~~ (A) Each facility operator and shift supervisor of a municipal waste combustor shall obtain and maintain a current provisional operator certification from the American Society of Mechanical Engineers (ASME QRO-1-1994).

~~(2)~~ (B) Each facility operator and shift supervisor of a municipal waste combustor shall have completed full certification or shall have scheduled a full certification exam with the American Society of Mechanical Engineers (ASME QRO-1-1994).

~~(3)~~ (C) The owner or operator of a ~~small or large~~ municipal waste combustor plant shall not allow the facility to be operated at any ~~times~~ time unless one of the following persons is on duty at the affected facility:

~~(A)~~ (i) a fully certified chief facility operator,

~~(B)~~ (ii) a provisionally certified chief facility operator who is scheduled to take full certification exam according to the schedule specified in ~~Subparagraph (2) of this Paragraph.~~ Part (B) of this Subparagraph,

~~(C)~~ (iii) a fully certified shift supervisor, or

~~(D)~~ (iv) a provisionally certified shift supervisor who is scheduled to take the full certification exam according to the schedule specified in ~~Subparagraph (2) of this Paragraph.~~ Part (B) of this Subparagraph.

If one of the persons listed in this ~~Subparagraph~~ Part leaves the affected facility during their operating shift, a provisionally certified control room operator who is onsite at the affected facility may fulfill the requirements in this ~~Subparagraph.~~ Part.

~~(b)~~ (2) The owner or operator of a municipal waste combustor located at a small or large municipal waste combustor plant shall develop and update on a yearly basis a site-specific operating manual that shall at the minimum address the elements of municipal waste combustor unit operation specified in ~~40 CFR 60.54b~~ Paragraphs (e)(1) through ~~(e)(11).~~ (e)(11) of 40 CFR 60.54b.

~~(c)~~ (3) By July 1, 1999, or six months after the date of startup of a municipal waste combustor located at a small or large municipal waste combustor plant, whichever is later, the owner or operator of the

municipal waste combustor plant shall comply with ~~Subparagraphs (1) to (3) of this Paragraph.~~ the following requirements:

~~(1)~~ (A) All chief facility operators, shift supervisors, and control room operators shall complete the EPA municipal waste combustor training course.

~~(A)~~ (i) The requirements specified in ~~Subparagraph (1) of this Paragraph~~ Part (A) of this Subparagraph shall not apply to chief facility operators, shift supervisors, and control room operators who have obtained full certification from the American Society of Mechanical Engineers on or before July 1, 1998.

~~(B)~~ (ii) The owner or operator may request that the Administrator waive the requirement specified in ~~Subparagraph (1) of this Paragraph~~ Part (A) of this Subparagraph for chief facility operators, shift supervisors, and control room operators who have obtained provisional certification from the American Society of Mechanical Engineers on or before July 1, 1998.

~~(2)~~ (B) The owner or operator of a municipal waste combustor located at a small or large municipal waste combustor plant shall establish a training program to review the operating manual, according to the schedule specified in ~~Parts (A) and (B) of this Subparagraph.~~ Subparts (i) and (ii) of this Part, with each person who has responsibilities affecting the operation of an affected facility, including the chief facility operators, shift supervisors, control room operators, ash handlers, maintenance personnel, and crane-load handlers.

~~(A)~~ (i) Each person specified in ~~Subparagraph (c)(2) of this Rule~~ Part (B) of this Subparagraph shall undergo initial training no later than the date specified in ~~Subparts (c)(2)(A)(i), (c)(2)(B)(ii), or (c)(2)(C)(iii) of this Rule.~~ Sub-subparts (I) through (III) of this Subpart, whichever is later.

~~(i)~~ (I) The date six months after the date of startup of the affected facility;

~~(ii)~~ (II) July 1, 1999; or

~~(iii)~~ (III) The date prior to the day when the person assumes responsibilities affecting municipal waste combustor unit operation.

~~(B)~~ (ii) Annually, following the initial training required by ~~Part (c)(2)(A) of this Rule.~~ Subpart (i) of this Part.

~~(3)~~ (C) The operating manual required by ~~Paragraph (c) of this Rule~~ Subparagraph (2) of this Paragraph shall be kept in a readily accessible location for all persons required to undergo training under ~~Subparagraph (c)(2) of this Paragraph.~~ Part (B) of this Subparagraph. The operating manual and records of training shall be available for inspection by the personnel of the Division on request.

~~(d)~~ (4) The referenced ASME exam in this Rule is hereby incorporated by reference and includes subsequent amendments and editions. Copies of the referenced ASME exam may be obtained from the American Society of Mechanical Engineers (ASME), 22 Law Drive, Fairfield, NJ 07007, at a cost of forty nine dollars ($49.00).

(b) Hospital, Medical and Infectious Waste Incinerators.

(1) The owner or operator of a HMIWI shall not allow the HMIWI to operate at any time unless a fully trained and qualified HMIWI operator is accessible, either at the facility or available within one hour. The trained and qualified HMIWI operator may operate the HMIWI directly or be the direct supervisor on one or more HMIWI operators.

(2) Operator training and qualification shall be obtained by completing the requirements of Paragraphs (c) through (g) of 40 CFR Part 60.53c.

(3) The owner or operator of a HMIWI shall maintain, at the facility, all items required by Subparagraphs (h)(1) through (h)(10) of 40 CFR Part 60.53c.

(4) The owner or operator of a HMIWI shall establish a program for reviewing the information required by Subparagraph (3) of this Paragraph annually with each HMIWI operator. The initial review of the information shall be conducted by January 1, 2000. Subsequent reviews of the information shall be conducted annually.

(5) The information required by Subparagraph (3) of this Paragraph shall be kept in a readily accessible location for all HMIWI operators. This information, along with records of training shall be available for inspection by Division personnel upon request.

(6) All HMIWI operators shall be in compliance with this Paragraph by July 1, 2000.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10).

.1209 COMPLIANCE SCHEDULES

(a) Except for any municipal waste combustor located at a small or large municipal waste combustor ~~plant.~~ plant or any HMIWI, the owner or operator of any incinerator for which construction began after September 30, 1991, shall be in compliance with this Section or Rule .1110 of this Subchapter, whichever is applicable, before beginning operation.

(b) Municipal Waste Combustors.

~~(b)~~ (1) The owner or operator of a large municipal waste combustor plant shall choose one of the following

three compliance schedule options:

~~(1)~~ (A) comply with all the requirements or close before July 1, 1999; ~~or~~

~~(2)~~ (B) comply with all the requirements after one year but before three years following the date of issuance of a revised construction and operation permit, if permit modification is required, or after July 1, 1999 but before July 1, 2001, if a permit modification is not required. If this option is chosen, then the owner or operator of the facility shall submit to the Director measurable and enforceable incremental steps of progress towards compliance which include:

~~(A)~~ (i) a date by which contracts for the emission control system or equipment shall be awarded or orders issued for purchase of component parts;

~~(B)~~ (ii) a date by which on site construction, installation, or modification of emission control equipment shall begin;

~~(C)~~ (iii) a date by which on site construction, installation, or modification of emission control equipment shall be completed;

~~(D)~~ (iv) a date for initial startup of emissions control equipment;

~~(E)~~ (v) a date for initial performance test(s) of emission control equipment; and

~~(F)~~ (vi) a date by which the facility shall be in compliance with this Section, which shall be no later than three years from the issuance of the ~~permit.~~ permit; or

~~(3)~~ (C) close between July 1, 1999 and July 1, 2001. If this option is chosen then the owner or operator of the facility shall submit to the Director a closure agreement which includes the date of the plant closure.

~~(c)~~ (2) The owner or operator of a small municipal waste combustor plant shall comply with all requirements, or close, within three years following the date of issuance of a revised construction and operation permit, if a permit modification is required, or by July 1, 2001, if a permit modification is not required.

~~(d)~~ (3) All municipal waste combustors located within large municipal waste combustor plant for which construction, modification, or reconstruction commenced after June 26, 1987, but before September 19, 1994, shall comply with the emission limit for mercury specified in Paragraph ~~(g)(2)~~ (g)(1) of Rule .1205 of this Section and the emission limit for dioxin and furan specified in Paragraph (m)(2) of Rule .1205 of this Section within one year following issuance of a revised construction and operation permit, if a permit modification is required, or by July 1, 1999, whichever is later.

~~(e)~~ (4) The owner or operator shall certify to the Director within five days after the deadline, for each increment of progress, whether the required increment of progress has been met.

(c) Hospital, Medical, and Infectious Waste Incinerators.

(1) Title V Application Date. All HMIWI's subject to these rules shall have submitted an application for a permit under the procedures of 15A NCAC 2Q .0500, Title V Procedures, by January 1, 2000.

(2) Final Compliance Date. Except for those HMIWIs described in Subparagraphs (3) and (4) of this Paragraph, all HMIWIs subject to this Rule shall be in compliance with this Rule or close on or before July 1, 2000.

(3) Installation of Air Pollution Control Equipment. Any HMIWI planning to install the necessary air pollution control equipment to comply with the emission standards in Rule .1205 of this Section shall be in compliance with Rule .1205 of this Section by September 15, 2002. If this option is chosen, then the owner or operator of the HMIWI shall submit to the Director measurable and enforceable incremental steps of progress towards compliance which include:

(A) the submission of a petition for site specific operating parameters under 40 CFR 63.56c(i);

(B) the obtaining of services of an architectural and engineering firm regarding the air pollution control device(s);

(C) the obtaining of design drawings of the air pollution control device(s);

(D) the ordering of air pollution control device(s);

(E) the obtaining of the major components of the air pollution control device(s);

(F) the initiation of site preparation for the installation of the air pollution control device(s);

(G) the initiation of installation of the air pollution control device(s);

(H) the initial startup of the air pollution control device(s); and

(I) the initial compliance test(s) of the air pollution control device(s).

(4) Petition for Extension of Final Compliance Date.

(A) The owner or operator of an affected HMIWI may petition the Director for an extension of the compliance deadline of Subparagraph (2) of this Paragraph provided that the following information is submitted by January 1, 2000, to allow the Director adequate time to grant or deny the extension by July 1, 2000:

(i) documentation of the analyses undertaken to support the need for an extension, including an explanation of why up to July 1, 2002 is sufficient time to comply with this Rule while July 1, 2000 is not sufficient. The documentation shall also include an evaluation of the option to transport the waste offsite to a commercial medical

waste treatment and disposal facility on a temporary or permanent bases; and

(ii) documentation of the measurable and enforceable incremental steps of progress listed in Subparagraph (3) of this Paragraph to be taken towards compliance with the emission standards in Rule .1205 of this Section.

(B) The Director may grant the extension if all the requirements in Part (A) of this Subparagraph are met.

(C) If the extension is granted, the HMIWI shall be in compliance with this Section by July 1, 2002.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4),(5).

SECTION .1500 - TRANSPORTATION CONFORMITY

.1501 PURPOSE, SCOPE AND APPLICABILITY

~~(a) The purpose of this Section is to assure the conformity of transportation plans, programs, and projects that are developed, funded, or approved by the United States Department of Transportation and by metropolitan planning organizations or other recipients of funds under Title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.), or State or Local only sources of funds, with all plans required of areas designated as nonattainment or maintenance under 40 CFR 81.334 and listed in Paragraph (b) or (c) of this Rule.~~

~~(b) This Section applies to the emissions of volatile organic compounds and nitrogen oxides in the following areas:~~

~~(1) Davidson County;~~
~~(2) Durham County;~~
~~(3) Forsyth County;~~
~~(4) Gaston County;~~
~~(5) Guilford County;~~
~~(6) Mecklenburg County;~~
~~(7) Wake County;~~
~~(8) Dutchville Township in Granville County; and~~
~~(9) that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek, and back to the Yadkin River.~~

~~(c) This Section applies to the emissions of carbon monoxide in the following areas:~~

~~(1) Durham County;~~
~~(2) Forsyth County;~~
~~(3) Mecklenburg County; and~~
~~(4) Wake County.~~

~~(d) This Section applies, in the areas identified in Paragraph (b) or (c) of this Rule for the pollutants identified in Paragraph (b) or (c) of this Rule, to the adoption, acceptance, approval, or support of transportation plans, transportation improvement programs, and FHWA/FTA projects for which conformity determinations are required under 40 CFR 51.394 and all other State or locally only funded transportation projects with such exceptions as allowed by 40 CFR 51.394(c), 51.460, or 51.462.~~

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10).

.1502 DEFINITIONS

~~For the purposes of this Section, the definitions contained in 40 CFR 51.392 and the following definitions apply:~~

~~(1) "Consultation" means that one party confers with another identified party, provides all information necessary to that party needed for meaningful input, and considers and responds to the views of that party in a timely, substantive written manner prior to any final decision. At least two weeks shall be allowed to submit comments during consultation (except for notification of federal agencies and actions specified in 40 CFR 51.402 that only require notification) and such comments and written responses shall be made part of the final document.~~

~~(2) "State or local project" means any highway or transit project which is proposed to receive only funding assistance (receives no federal funding) or approval through the State or any local transportation program.~~

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10).

.1503 TRANSPORTATION CONFORMITY DETERMINATION

~~(a) Conformity analyses, determinations, and redeterminations for transportation plans, transportation improvement programs, FHWA/FTA projects, and State or local projects shall be made according to the requirements of 40 CFR 51.400 and shall comply with the applicable requirements of 40 CFR 51.456 and 51.458. For the purposes of this Rule, State or local projects shall be subject to the same requirements under 40 CFR Part 51 as FHWA/FTA projects.~~

~~(b) Before making a conformity determination, the metropolitan planning organizations, local transportation departments, North Carolina Department of Transportation, United States Department of Transportation, the Division of Environmental Management, local air pollution control agencies, and United States Environmental Protection Agency shall consult with each other on matters described in 40 CFR 51.402(c). Consultation shall begin as early as possible in the development of the emissions analysis used to support a conformity determination. The agency that performs the emissions analysis shall make the analysis available to the Division of Environmental Management and the general public for comments; at least two weeks shall be allowed for review and comment on the emissions analysis. The agency that performs the emissions analysis shall address all comments received and these comments and responses thereto shall be included in the final document. In the event that the Division of Environmental Management disagrees with the resolution of its comments, the conflict may be escalated to the Governor within 14 days and shall be resolved in accordance with 40 CFR 51.402(d). The 14 day appeal period shall begin when the North Carolina Department of Transportation or the metropolitan planning organization notifies the Director in writing of the resolution of the comments. Any consultation undertaken after the conformity determination is made shall include the Division of Environmental Management.~~

~~(c) The agency that performs the conformity analysis shall notify the Division of Environmental Management of:~~

~~(1) any changes in planning or analysis assumptions (including land use and vehicle miles traveled (VMT) forecasts), and~~

~~(2) any revisions to transportation plans or transportation improvement plans that add, delete, or change projects that require a new emissions analysis (including design scope and dates).~~

~~The agency that performs the conformity analysis shall allow the Division of Environmental Management at least two weeks to review and comment on the proposed change. Comments made by the Division of Environmental Management and responses thereto made by the agency shall become part of the final planning document.~~

~~(d) Transportation plans shall satisfy the requirements of 40 CFR 51.404. Transportation plans and transportation improvement programs shall satisfy the fiscal constraints specified in 40 CFR 51.408. Transportation plans, programs, and FHWA/FTA projects shall satisfy the applicable requirements of 40 CFR 51.410 through 51.448.~~

~~(e) No recipient of federal funds designated under Title 23 U.S.C. or the Federal Transit Act shall adopt or approve, nor any other person construct, a regionally significant highway or transit project, regardless of funding source, unless there is a currently conforming transportation plan and transportation improvement program consistent with the requirements of 40 CFR 51.420 and the project conforms with the applicable implementation plan consistent with the requirements of 40 CFR 51.450.~~

~~(f) The degree of specificity required in a transportation plan and the specific travel network assumed for air quality modeling shall not preclude the consideration of alternatives in the National Environmental Policy Act of 1969 process, in accordance with 40 CFR 51.406.~~

~~(g) When assisting or approving any action with air quality-related consequence, the Federal Highway Administration and the Federal Transit Administration of the Department of Transportation shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the national ambient air quality standards. This priority shall be consistent with statutory requirements for allocation of funds among states or other jurisdictions.~~

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10).

.1504 DETERMINING TRANSPORTATION-RELATED EMISSIONS

~~(a) The procedures in 40 CFR 51.452 shall be used to determine regional transportation-related emissions.~~

~~(b) The procedures in 40 CFR 51.454 shall be used to determine localized carbon monoxide concentrations (hot-spot analysis).~~

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10).

SECTION .1600 - GENERAL CONFORMITY

.1601 PURPOSE, SCOPE AND APPLICABILITY

(a) The purpose of this Section is also to assure that a federal action conforms with all plans required of areas designated as nonattainment or maintenance under 40 CFR 81.334 and listed in Paragraph (b) or (c) of this Rule. No department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to these maintenance plans.

(b) This Section applies to the emissions of volatile organic compounds and nitrogen oxides in the following areas:

(1) Davidson County,
(2) Durham County,
(3) Forsyth County,
(4) Gaston County,
(5) Guilford County,
(6) Mecklenburg County,
(7) Wake County,
(8) Dutchville Township in Granville County, and
(9) that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek, and back to the Yadkin River.

(c) This Section applies to the emissions of carbon monoxide in the following areas:

(1) Durham County,
(2) Forsyth County,
(3) Mecklenburg County, and
(4) Wake County.

(d) This Section applies, in the areas identified in Paragraph (b) or (c) of this Rule for the pollutants identified in Paragraph (b) or (c) of this Rule, to federal actions not covered by Section .2000 ~~.1500~~ of this Subchapter.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10).

SECTION .2000 - TRANSPORTATION CONFORMITY

.2001 PURPOSE, SCOPE AND APPLICABILITY

(a) The purpose of this Section is to assure the conformity of transportation plans, programs, and projects that are developed, funded, or approved by the United States Department of Transportation and by metropolitan planning organizations or other recipients of funds under Title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.), or State or Local only sources of funds, with all plans required of areas designated as nonattainment or maintenance under 40 CFR 81.334 and listed in Paragraph (b) or (c) of this Rule.

(b) This Section applies to the emissions of volatile organic compounds and nitrogen oxides in the following areas:

(1) Davidson County,
(2) Durham County,
(3) Forsyth County,
(4) Gaston County,
(5) Guilford County,
(6) Mecklenburg County,
(7) Wake County,
(8) Dutchville Township in Granville County, and
(9) that part of Davie County bounded by the Yadkin

River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek, and back to the Yadkin River.

(c) This Section applies to the emissions of carbon monoxide in the following areas:

(1) Durham County,
(2) Forsyth County,
(3) Mecklenburg County, and
(4) Wake County.

(d) This Section applies, in the areas identified in Paragraph (b) or (c) of this Rule for the pollutants identified in Paragraph (b) or (c) of this Rule, to:

(1) the adoption, acceptance, approval, or support of transportation plans and transportation plan amendments developed pursuant to 23 CFR Part 450 or 49 CFR Part 613 by a metropolitan planning organization or the United States Department of Transportation;
(2) the adoption, acceptance, approval, or support of transportation improvement programs or amendments to transportation improvement programs pursuant to 23 CFR Part 450 or 49 CFR Part 613 by a metropolitan planning organization or the United States Department of Transportation; or
(3) the approval, funding, or implementation of FHWA/FTA projects.

Conformity determinations are not required under this Section for individual projects that are not FHWA/FTA projects. However, 40 CFR 93.121 shall apply to these projects if they are regionally significant projects.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10).

.2002 DEFINITIONS

For the purposes of this Section, the definitions contained in 40 CFR 93.101 and the following definitions apply:

(1) "Consultation" means that one party confers with another identified party, provides all information necessary to that party needed for meaningful input, and considers and responds to the views of that party in a timely, substantive written manner prior to any final decision.
(2) "Regionally significant project" means a transportation project (other than an exempt project under 40 CFR 93.126) that is on a facility that serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls and sports complexes, or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guide way transit facilities that offer an alternative to regional highway travel.
(3) "Regionally significant State or local project" means any highway or transit project that is a regionally significant project and that is proposed to receive only funding assistance (receives no federal funding) or approval through the State or any local program.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10).

.2003 TRANSPORTATION CONFORMITY DETERMINATION

(a) Conformity analyses, determinations, and redeterminations for transportation plans, transportation improvement programs, FHWA/FTA projects, and State or local regionally significant projects shall be made according to the requirements of 40 CFR 93.104 and shall comply with the applicable requirements of 40 CFR 93.124 and 93.125. For the purposes of this Rule, regionally significant State or local projects shall be subject to the same requirements under 40 CFR Part 93 as FHWA/FTA projects except that State Environmental Policy Act procedures and requirements shall be substituted for National Environmental Policy Act procedures and requirements. Regionally significant State or local projects subject to this Section for which the State Environmental Policy Act process and a conformity determination have been completed may proceed toward implementation without further conformity determination unless more than three years have elapsed since the most recent major step (State Environmental Policy Act process completion, start of final design, acquisition of a significant portion of the right-of-way, or approval of the plans, specifications, and estimates) occurred. All phases of these projects considered in the conformity determination are also included if these phases were for the purpose of funding final design, right-of-way acquisition, construction, or any combination of these phases.

(b) Before making a conformity determination, the metropolitan planning organizations, local transportation departments, North Carolina Department of Transportation, United States Department of Transportation, the Division of Air Quality, local air pollution control agencies, and United States Environmental Protection Agency shall consult with each other on matters described in 40 CFR 93.105(c). Consultation shall begin as early as possible in the development of the emissions analysis used to support a conformity determination. The agency that performs the emissions analysis shall make the analysis available to the Division of Air Quality and the general public for comments; at least 21 days shall be allowed for review and comment on the emissions analysis. The agency that performs the emissions analysis shall address all comments received and these comments and responses thereto shall be included in the final document. If the Division of Air Quality disagrees with the resolution of its comments, the conflict may be escalated to the Governor within 14 days and shall be resolved in accordance with 40 CFR 93.105(d). The 14-day appeal period shall begin when the North Carolina Department of Transportation or the metropolitan planning organization has confirmed receipt by the Director of the Division of Air Quality of the metropolitan planning organization's resolution that determines conformity.

(c) The agency that performs the conformity analysis shall notify the Division of Air Quality of:

(1) any changes in planning or analysis assumptions [including land use and vehicle miles traveled (VMT) forecasts], and

(2) any revisions to transportation plans or transportation improvement plans that add, delete, or change projects that require a new emissions analysis (including design scope and dates).

Comments made by the Division of Air Quality and responses thereto made by the agency shall become part of the final planning document.

(d) Transportation plans shall satisfy the requirements of 40 CFR 93.106. Transportation plans and transportation improvement programs shall satisfy the fiscal constraints specified in 40 CFR 93.108. Transportation plans, programs, and FHWA/FTA projects shall satisfy the applicable requirements of 40 CFR 93.109 through 93.118.

(e) A recipient of federal funds designated under Title 23 U.S.C. or the Federal Transit Act shall not adopt or approve a regionally significant highway or transit project, regardless of funding source, unless there is a currently conforming transportation plan and transportation improvement program consistent with the requirements of 40 CFR 93.114 and the project conforms with the applicable implementation plan consistent with the requirements of 40 CFR 93.121.

(f) The degree of specificity required in a transportation plan and the specific travel network assumed for air quality modeling shall not preclude the consideration of alternatives in the National Environmental Policy Act of 1969 process, in accordance with 40 CFR 93.107.

(g) When assisting or approving any action with air quality-related consequence, the Federal Highway Administration and the Federal Transit Administration of the Department of Transportation shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the national ambient air quality standards as provided under 40 CFR 93.103. This priority shall be consistent with statutory requirements for allocation of funds among states or other jurisdictions.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10).

.2004 DETERMINING TRANSPORTATION-RELATED EMISSIONS

(a) The procedures in 40 CFR 93.122 shall be used to determine regional transportation-related emissions.

(b) The procedures in 40 CFR 93.123 shall be used to determine localized carbon monoxide concentrations (hot-spot analysis).

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10).

.2005 MEMORANDUM OF AGREEMENT

The Division of Air Quality shall develop and maintain a memorandum of agreement with the North Carolina Department of Transportation, the metropolitan planning organizations of the areas identified in Rule .2001(b) or (c) of this Section, and the Federal Highway Administration to describe the participation and responsibilities of each of these agencies in implementing the requirements of this Section and 40 CFR Part 93. The memorandum of agreement shall include:

(1) consultation procedures described under 40 CFR 93.105;

(2) the time allowed for each agency to review and comment on or to respond to comments on transportation improvement programs, transportation plans, and transportation projects; and

(3) consultation procedures for the development of State Implementation Plans that relate to transportation.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10).

SUBCHAPTER 2Q - AIR QUALITY PERMIT PROCEDURES

SECTION .0100 - GENERAL PROVISIONS

.0102 ACTIVITIES EXEMPTED FROM PERMIT REQUIREMENTS

(a) If a source is subject to any of the following rules, then the source is not exempted from permit requirements, and the exemptions in Paragraph (b) of this Rule do not apply:

(1) new source performance standards under 15A NCAC 2D .0524 or 40 CFR Part 60, except:

(A) 40 CFR Part 60, Subpart Dc, industrial, commercial, and institutional steam generating units located at a facility not required to be permitted under Section .0500 of this Subchapter;

(B) 40 CFR Part 60, Subpart Kb, volatile organic liquid storage vessels located at a facility not required to be permitted under Section .0500 of this Subchapter; ~~or~~

(C) 40 CFR Part 60, Subpart AAA, new residential wood heaters; or

(D) 40 CFR Part 60, Subpart WWW, municipal solid waste landfills not required to be permitted under Section .0500 of this Subchapter;

(2) national emission standards for hazardous air pollutants under 15A NCAC 2D .1110 or 40 CFR Part 61, except asbestos demolition and renovation activities;

(3) prevention of significant deterioration under 15A NCAC 2D .0530;

(4) new source review under 15A NCAC 2D .0531 or .0532;

(5) sources of volatile organic compounds subject to the requirements of 15A NCAC 2D .0900 that are located in Mecklenburg County in accordance with 15A NCAC 2D .0902;

(6) sources required to apply maximum achievable control technology (MACT) for hazardous air pollutants under 15A NCAC 2D .1109 or .1111 or 40 CFR Part 63 that are required to have a permit under Section .0500 of this Subchapter; or

(7) sources at facilities subject to 15A NCAC 2D .1100. (If a source does not emit a toxic air pollutant for which the facility at which it is located has been evaluated, it shall be exempted from needing a permit

if it qualifies for one of the exemptions in Paragraph (b) of this Rule).

(b) The following activities do not need a permit or permit modification under this Subchapter; however, the Director may require the owner or operator of these activities to register them under 15A NCAC 2D .0200:

(1) activities exempted because of category (These activities shall not be included on the permit application or in the permit.):

(A) maintenance, upkeep, and replacement:

(i) maintenance, structural changes, or repairs which do not change the capacity of such process, fuel-burning, refuse-burning, or control equipment, and do not involve any change in quality or nature or increase in quantity of emission of regulated air pollutants;

(ii) housekeeping activities or building maintenance procedures, including painting buildings, resurfacing floors, roof repair, washing, portable vacuum cleaners, sweeping, use and associated storage of janitorial products, or insulation removal;

(iii) use of office supplies, supplies to maintain copying equipment, or blueprint machines;

(iv) use of fire fighting equipment;

(v) paving parking lots; or

(vi) replacement of existing equipment with equipment of the same size, type, and function that does not result in an increase to the actual or potential emission of regulated air pollutants and that does not affect the compliance status, and with replacement equipment that fits the description of the existing equipment in the permit, including the application, such that the replacement equipment can be operated under that permit without any changes in the permit;

(B) air conditioning or ventilation: comfort air conditioning or comfort ventilating systems which do not transport, remove, or exhaust regulated air pollutants to the atmosphere;

(C) laboratory activities:

(i) bench-scale, on-site equipment used exclusively for chemical or physical analysis for quality control purposes, staff instruction, water or wastewater analyses, or non-production environmental compliance assessments;

(ii) bench-scale experimentation, chemical or physical analyses, training or instruction from not-for-profit, non-production educational laboratories;

(iii) bench-scale experimentation, chemical or physical analyses, training or instruction from hospitals or health laboratories pursuant to the determination or diagnoses of illness; or

(iv) research and development laboratory activities that are not required to be permitted under Section .0500 of this Subchapter provided the activity produces no commercial product or feedstock material;

(D) storage tanks:

(i) storage tanks used solely to store fuel oils, kerosene, diesel, crude oil, used motor oil, lubricants, cooling oils, natural gas or ~~liquified~~ liquefied petroleum gas;

(ii) storage tanks used to store gasoline for which there are no applicable requirements except Stage I controls under 15A NCAC 2D .0928;

(iii) storage tanks used solely to store inorganic liquids; or

(iv) storage tanks or vessels used for the temporary containment of materials resulting from an emergency response to an unanticipated release of hazardous materials;

(E) combustion and heat transfer equipment:

(i) space heaters burning distillate oil, kerosene, natural gas, or ~~liquified~~ liquefied petroleum gas operating by direct heat transfer and used solely for comfort heat;

(ii) residential wood stoves, heaters, or fireplaces;

(iii) hot water heaters which are used for domestic purposes only and are not used to heat process water;

(F) wastewater treatment processes: industrial wastewater treatment processes or municipal wastewater treatment processes for which there are no applicable requirements;

(G) gasoline distribution:

(i) gasoline service stations or gasoline dispensing facilities that are not required to be permitted under Section .0500 of this Subchapter; or

(ii) gasoline dispensing equipment at facilities required to be permitted under Section .0500 of this Subchapter if the equipment is used solely to refuel facility equipment;

(H) dispensing equipment: equipment used solely to dispense diesel fuel, kerosene, lubricants or cooling oils;

(I) solvent recycling: portable solvent distillation systems used for on-site solvent recycling if:

(i) The portable solvent distillation system

is not:

(I) owned by the facility, and
(II) operated at the facility for more than seven consecutive days; and

(ii) The material recycled is:
(I) recycled at the site of origin,
(II) the original material is non-photochemically reactive in accordance with 15A NCAC 2D .0518, Miscellaneous Volatile Organic Compound Emissions, and
(III) all make up material is non-photochemically reactive in accordance with 15A NCAC 2D .0518;

(J) processes:
(i) small electric motor burn-out ovens with secondary combustion chambers or afterburners;
(ii) small electric motor bake-on ovens;
(iii) burn-off ovens for paint-line hangers with afterburners;
(iv) hosiery knitting machines and associated lint screens, hosiery dryers and associated lint screens, and hosiery dyeing processes where bleach or solvent dyes are not used;
(v) blade wood planers planing only green wood;

(K) solid waste landfills: municipal solid waste landfills not required to be permitted under Section .0500 of this Subchapter (This Part does not apply to flares and other sources of combustion at solid waste landfills.);

~~(K)~~ (L) miscellaneous:
(i) motor vehicles, aircraft, marine vessels, locomotives, tractors or other self-propelled vehicles with internal combustion engines;
(ii) non-self-propelled non-road engines, except generators, regulated by rules adopted under Title II of the federal Clean Air Act;
(iii) equipment used for the preparation of food for direct on-site human consumption;
(iv) a source whose emissions are regulated only under Section 112(r) or Title VI of the federal Clean Air Act that is not required to be permitted under Section .0500 of this Subchapter;
(v) exit gases from in-line process analyzers;
(vi) stacks or vents to prevent escape of sewer gases from domestic waste through plumbing traps;
(vii) refrigeration equipment that is consistent with Section 601 through 618 of Title VI (Stratospheric Ozone Protection) of the federal Clean Air Act, 40 CFR Part 82, and any other regulations promulgated by EPA under Title VI for stratospheric ozone protection, except those units used as or in conjunction with air pollution control equipment;
(viii) equipment not vented to the outdoor atmosphere with the exception of equipment that emits volatile organic compounds;
(ix) equipment that does not emit any regulated air pollutants;
(x) facilities subject only to a requirement under 40 CFR Part 63 that are not required to be permitted under Section .0500 of this Subchapter (This Subpart does not apply when a control device is used to meet a MACT or GACT emission standard.); ~~or~~
(xi) sources for which there are no applicable requirements and that are at a facility not required to be permitted under Section .0500 of this ~~Subchapter.~~ Subchapter; or
(xii) sources for which there are no applicable requirements and that are at a facility required to be permitted under Section .0500 of this Subchapter following the procedures in Paragraph (c) of this Rule;

(2) activities exempted because of size or production rate (These activities shall not be included in the permit. If the facility is subject to the permitting procedures under Section .0500 of this Subchapter, these activities shall be listed on the permit application; otherwise, these activities shall not be listed on the permit application.):
(A) storage tanks:
(i) above-ground storage tanks with a storage capacity of no more than 1100 gallons storing organic liquids with a true vapor pressure of no more than 10.8 pounds per square inch absolute at 70°F; or
(ii) underground storage tanks with a storage capacity of no more than 2500 gallons storing organic liquids with a true vapor pressure of no more than 10.8 psi absolute at 70°F;
(B) combustion and heat transfer equipment located at a facility not required to be permitted under Section .0500 of this Subchapter:
(i) fuel combustion equipment, except for internal combustion engines, firing exclusively kerosene, No. 1 fuel oil, No.

2 fuel oil, equivalent unadulterated fuels, or a mixture of these fuels or one or more of these fuels mixed of with natural gas or ~~liquified~~ liquefied petroleum gas with a heat input of less than:

(I) 10 million BTU per hour for which construction, modification, or reconstructed commenced after June 9, 1989; or

(II) 30 million BTU per hour for which construction, modification, or reconstruction commenced before June 10, 1989;

(ii) fuel combustion equipment, except for internal combustion engines, firing exclusively natural gas or ~~liquified~~ liquefied petroleum gas or a mixture of these fuels with a heat input rating less than 65 million BTU per hour;

(iii) space heaters burning waste oil if:

(I) The heater burns only oil that the owner or operator generates or used oil from do-it-yourself oil changers who generate used oil as household wastes;

(II) The heater is designed to have a maximum capacity of not more than 500,000 Btu per hour; and

(III) The combustion gases from the heater are vented to the ambient air;

(iv) emergency use generators and other internal combustion engines not regulated by rules adopted under Title II of the federal Clean Air Act, except self-propelled vehicles, that have a rated capacity of no more than:

(I) 310 kilowatts (electric) or 460 horsepower for natural gas-fired engines,

(II) 830 kilowatts (electric) or 1150 horsepower for ~~liquified~~ liquefied petroleum gas-fired engines,

(III) 270 kilowatts (electric) or 410 horsepower for diesel-fired or kerosene-fired engines, or

(IV) 21 kilowatts (electric) or 31 horsepower for gasoline-fired engines;

(v) portable generators and other portable equipment with internal combustion engines not regulated by rules adopted under Title II of the federal Clean Air Act, except self-propelled vehicles, that operate at the facility no more than a combined 350 hours for any 365-day period provided the generators or engines have a rated capacity of no more than 750 kilowatt (electric) or 1100 horsepower each and provided records are maintained to verify the hours of operation;

(vi) peak shaving generators that produce no more than 325,000 kilowatt-hours of electrical energy for any 12-month period provided records are maintained to verify the energy production on a monthly basis and on a 12-month basis;

(C) gasoline distribution: bulk gasoline plants with an average daily throughput of less than 4000 gallons that is not required to be permitted under Section .0500 of this Subchapter;

(D) processes:

(i) printing, paint spray booths or other painting or coating operations without air pollution control devices (water wash and filters that are an integral part of the paint spray booth are not considered air pollution control devices) located at a facility whose facility-wide actual emissions of:

(I) Volatile organic compounds are less than five tons per year, and

(II) Photochemically reactive solvent emissions under 15A NCAC 2D .0518 are less than 30 pounds per day;

provided the facility is not required to be permitted under Section .0500 of this Subchapter;

(ii) ~~saw mills~~ sawmills that saw no more than 2,000,000 board feet per year provided only green wood is sawed;

(iii) perchloroethylene dry cleaners that ~~consume~~ emits less than 13,000 pounds ~~(965 gallons)~~ of perchloroethylene per year;

(iv) electrostatic dry powder coating operations with filters or powder recovery systems including electrostatic dry powder coating operations equipped ~~with powder recovery including~~ curing ovens with a heat input of less than 10,000,000 BTU per hour;

(E) miscellaneous:

(i) any source ~~without an air pollution control device~~ whose potential emissions of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide before air pollution control devices, i.e., potential uncontrolled emissions, are each no more than five tons per year and whose potential emissions of hazardous

air pollutants are below their lessor quantity cutoff except:

(I) storage tanks,

(II) fuel combustion equipment, excluding fuel combustion equipment at facilities required to have a permit under Section .0500 of this Subchapter, firing exclusively kerosene, No. 1 fuel oil, No. 2 fuel oil, equivalent unadulterated fuels, natural gas, ~~liquified~~ liquefied petroleum gas, or a mixture of these fuels,

(III) space heaters burning waste oil,

(IV) generators, excluding emergency generators, or other non-self-propelled internal combustion engines,

(V) bulk gasoline plants,

(VI) printing, paint spray booths, or other painting or coating operations,

(VII) saw mills,

(VIII) perchloroethylene dry cleaners, or

(IX) electrostatic dry powder coating operations,

provided that the total potential emissions of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide from the facility are each less than 40 tons per year and the total potential emissions of all hazardous air pollutants are below their lesser quantity cutoff emission rates or provided that the facility has an air quality permit;

(ii) any facility ~~without an air pollution control device~~ whose actual emissions of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, or carbon monoxide before air pollution control devices, i.e., uncontrolled emissions, are each less than five tons per year, whose potential emissions of all hazardous air pollutants are below their lesser quantity cutoff emission rates, and which is not required to have a permit under Section .0500 of this Subchapter;

(iii) any source that only emits hazardous air pollutants that are not also a particulate or a volatile organic compound and whose potential emissions of hazardous air pollutants are below their lesser quantity cutoff emission rates; or

(iv) any incinerator covered under Paragraph (d) of 15A NCAC 2D .1201.

(F) case-by-case exemption:

(i) for activities located at facilities not required to have a permit under Section .0500 of this Subchapter, activities that the applicant demonstrates to the satisfaction of the Director:

(I) to be negligible in their air quality impacts,

(II) not to have any air pollution control device, and

(III) not to violate any applicable emission control standard when operating at maximum design capacity or maximum operating rate, whichever is greater; or

(ii) for activities located at facilities required to have a permit under Section .0500 of this Subchapter: activities that the applicant demonstrates to the satisfaction of the Director:

(I) to be negligible in their air quality impacts,

(II) not to have any air pollution control device,

(III) not to violate any applicable emission control standard when operating at maximum design capacity or maximum operating rate, whichever is greater,

(IV) the potential emissions of each criteria pollutant is less than five tons per year, and

(V) the potential emissions of each hazardous air pollutant is less than 1000 pounds per year.

(c) The Director may exempt a source for which there are no applicable requirements at a facility required to have a permit under Section .0500 of this Subchapter from needing a permit if:

(1) The Director finds that emissions from the source are not likely to cause or contribute to any violation of an ambient air quality standard under 15A NCAC 2D .0400, or 40 CFR Part 50; and

(2) The proposed permit exemption is noticed along with the initial draft permit or the next draft permit revision requiring public notice or draft permit renewal, whichever occurs first, and is subject to public comment procedures in Section .0500 of this Subchapter.

If during the comment period EPA or any other person provides a satisfactory explanation to the Director of why the source should be permitted, the Director shall include the source in the facility's permit; otherwise, the Director shall not include the source in the facility's permit.

~~(c)~~ (d) Because an activity is exempted from being required to have a permit does not mean that the activity is exempted from any applicable requirement or that the owner or operator of the source is exempted from demonstrating compliance with any applicable requirement.

~~(d)~~ (e) Emissions from stationary source activities identified

in Paragraph (b) of this Rule shall be included in determining compliance with the toxic air pollutant requirements under 15A NCAC 2D .1100 or 2Q ~~.0700.~~ .0700 according to 15A NCAC 2Q .0702 (exemptions from air toxic permitting).

~~(e)~~ (f) The owner or operator of a facility or source claiming an exemption under Paragraph (b) of this Rule shall provide the Director documentation upon request that the facility or source is qualified for that exemption.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4); 143-215.108.

.0103 DEFINITIONS

For the purposes of this Subchapter, the definitions in G.S. 143-212 and 143-213 and the following definitions apply:

(1) "Air Pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive substance or matter which is emitted into or otherwise enters the ambient air. Water vapor is not considered to be an air pollutant.

(2) "Allowable emissions" mean the maximum emissions allowed by the applicable rules contained in 15A NCAC 2D or by permit conditions if the permit limits emissions to a lesser amount.

(3) "Alter or change" means to make a modification.

(4) "Applicable requirements" means:

(a) any requirement of Section .0500 of this Subchapter;

(b) any standard or other requirement provided for in the implementation plan approved or promulgated by EPA through rulemaking under Title 1 of the federal Clean Air Act that implements the relevant requirements of the federal Clean Air Act including any revisions to 40 CFR Part 52;

(c) any term or condition of a construction permit for a facility covered under 15A NCAC 2D .0530, .0531, or .0532;

(d) any standard or other requirement under Section 111 or 112 of the federal Clean Air Act, but not including the contents of any risk management plan required under Section 112 of the federal Clean Air Act;

(e) any standard or other requirement under Title IV;

(f) any standard or other requirement governing solid waste incineration under Section 129 of the federal Clean Air Act;

(g) any standard or other requirement under Section 183(e), 183(f), or 328 of the federal Clean Air Act;

(h) any standard or requirement under Title VI of the federal Clean Air Act unless a permit for such requirement is not required under this Section;

(i) any requirement under Section 504(b) or 114(a)(3) of the federal Clean Air Act; or

(j) any national ambient air quality standard or increment or visibility requirement under Part C of Title 1 of the federal Clean Air Act, but only as it would apply to temporary sources permitted pursuant to 504(e) of the federal Clean Air Act.

(5) "Applicant" means the person who is applying for an air quality permit from the Division.

(6) "Application package" means all elements or documents needed to make an application complete.

(7) "CFR" means Code of Federal Regulations.

(8) "Construction" means change in the method of operation or any physical change (including on-site fabrication, erection, installation, replacement, demolition, or modification of a source) that results in a change in emissions or affects the compliance status.

(9) "Director" means the Director of the Division of Environmental Management.

(10) "Division" means the Division of Environmental Management.

(11) "EPA" means the United States Environmental Protection Agency or the Administrator of the Environmental Protection Agency.

(12) "EPA approves" means full approval, interim approval, or partial approval by EPA.

(13) "Equivalent unadulterated fuels" means used oils that have been refined such that the content of toxic additives or contaminants in the oil are no greater than those in unadulterated fossil fuels.

(14) "Facility" means all of the pollutant emitting activities, except transportation facilities as defined under Rule .0802 of this Subchapter, that are located on one or more adjacent properties under common control.

(15) "Federally enforceable" or "federal-enforceable" means enforceable by EPA.

(16) "Fuel combustion equipment" means any fuel burning source covered under 15A NCAC 2D .0503, .0504, .0524(a)(1), (29), (56), or (65), or .0536.

(17) "Green wood" means wood with a moisture content of 18 percent or more.

(18) "Hazardous air pollutant" means any pollutant which has been listed pursuant to Section 112(b) of the federal Clean Air Act. Pollutants which are listed only in 15A NCAC 2D .1104 (Toxic Air Pollutant Guidelines), but not pursuant to Section 112(b), are not included in this definition.

(19) "Insignificant activities" means any activity exempted under Rule .0102 of this Section.

(20) "Irrevocable contract" means a contract that cannot be revoked without substantial penalty.

(21) "Lesser quantity cutoff" means:

(a) for a source subject to the requirements of Section 112(d) or (j) of the federal Clean Air Act, the level of emissions of hazardous air pollutants below which the following are not required:

(i) maximum achievable control technology

(MACT) or generally available control technology (GACT), including work practice standards, requirement under Section 112(d) of the federal Clean Air Act;

(ii) substitute MACT or GACT adopted under Section 112(l) of the federal Clean Air Act; or

(iii) a MACT standard established under Section 112(j) of the federal Clean Air Act;

(b) for modification of a source subject to, or may be subject to, the requirements of Section 112(g) of the federal Clean Air Act, the level of emissions of hazardous air pollutants below which MACT is not required to be applied under Section 112(g) of the federal Clean Air Act; or

(c) for all other sources, potential emissions of each hazardous air pollutant below 10 tons per year and the aggregate potential emissions of all hazardous air pollutants below 25 tons per year.

(22) "Major facility" means a major source as defined under 40 CFR 70.2.

(23) "Modification" means any physical change or change in method of operation that results in a change in emissions or affects compliance status of the source or facility.

(24) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a facility, source, or air pollution control equipment.

(25) "Peak shaving generator" means a generator that is located at a facility and is used only to serve that facility's on-site electrical load during peak demand periods for the purpose of reducing the cost of electricity; it does not generate electricity for resale. A peak shaving generator may also be used for emergency backup.

(26) "Permit" means the legally binding written document, including any revisions thereto, issued pursuant to G.S. 143-215.108 to the owner or operator of a facility or source that emits one or more air pollutants and that allows that facility or source to operate in compliance with G.S. 143-215.108. This document specifies the requirements applicable to the facility or source and to the permittee.

(27) "Permittee" means the person who has received an air quality permit from the Division.

(28) "Potential emissions" means the rate of emissions of any air pollutant which would occur at the facility's maximum capacity to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a facility to emit an air pollutant shall be treated as a part of its design if the limitation is federally enforceable. Such physical or operational limitations include air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed. Potential emissions include fugitive emissions as specified in the definition of major source in 40 CFR 70.2. Potential emissions do not include a facility's secondary emissions such as those from motor vehicles associated with the facility and do not include emissions from insignificant activities listed in Rule .0102(b)(1) of this Section. If a rule in 40 CFR Part 63 uses a different methodology to calculate potential emissions, that methodology shall be used for sources and pollutants covered under that rule.

(29) "Portable generator" means a generator permanently mounted on a trailer or a frame with wheels.

(30) "Regulated air pollutant" means:

(a) nitrogen oxides or any volatile organic compound as defined under 40 CFR 51.100;

(b) any pollutant for which there is an ambient air quality standard under 40 CFR Part 50 ;

(c) any pollutant regulated under 15A NCAC 2D .0524, .1110, or .1111 or 40 CFR Part 60, 61, or 63;

(d) any pollutant subject to a standard promulgated under Section 112 of the federal Clean Air Act or other requirements established under Section 112 of the federal Clean Air Act, including Section 112(g) (but only for the facility subject to Section 112(g)(2) of the federal Clean Air Act), (j), or (r) of the federal Clean Air Act; or

(e) any Class I or II substance listed under Section 602 of the federal Clean Air Act.

(31) "Sawmill" means a place or operation where logs are sawed into lumber consisting of one or more of these activities: debarking, sawing, and sawdust handling. Activities that are not considered part of a sawmill include chipping, sanding, planing, routing, lathing, and drilling.

~~(31)~~ (32) "Source" means any stationary article, machine, process equipment, or other contrivance, or combination thereof, from which air pollutants emanate or are emitted, either directly or indirectly.

~~(32)~~ (33) "Toxic air pollutant" means any of the carcinogens, chronic toxicants, acute systemic toxicants, or acute irritants that are listed in 15A NCAC 2D .1104.

~~(33)~~ (34) "Transportation facility" means a complex source as defined at G.S. 143-213(22) that is subject to the requirements of 15A NCAC 2D .0800.

~~(34)~~ (35) "Unadulterated fossil fuel" means fuel oils, coal, natural gas, or liquefied petroleum gas to which no toxic additives have been added that could result in the emissions of a toxic air pollutant listed under 15A NCAC 2D .1104.

Authority G.S. 143-215.3(a)(1); 143-212; 143-213.

.0107 CONFIDENTIAL INFORMATION

(a) All information required to be submitted to the

Commission or the Director under this Subchapter or Subchapter 2D of this Title shall be disclosed to the public unless the person submitting the information can demonstrate that the information is entitled to confidential treatment under G.S. 143-215.3C.

(b) A request that information be treated as confidential shall be made by the person submitting the information at the time that the information is submitted. The request shall state in writing reasons why the information should be held confidential. Any request not meeting these requirements shall be invalid.

(c) The Director shall ~~make a preliminary determination of~~ decide which information is entitled to confidential treatment and shall notify the person requesting confidential treatment of his decision within ~~90~~ 180 days of receipt of a request to treat information as confidential.

(d) Information for which a request has been made under Paragraph (b) of this Rule to treat as confidential shall be treated as confidential until the Director decides that it is not confidential.

Authority G.S. 143-215.3(a)(1); 143-215.3C.

SECTION .0300 - CONSTRUCTION AND OPERATION PERMITS

.0304 APPLICATIONS

(a) Obtaining and filing application. Permit, permit modification, or permit renewal applications may be obtained and shall be filed in writing ~~in accordance with~~ according to Rule .0104 of this Subchapter.

(b) Information to accompany application. Along with filing a complete application form, the applicant shall also file the following:

(1) for a new facility or an expansion of existing facility, a consistency determination ~~in accordance with~~ according to G.S. 143-215.108(f) that:
   (A) bears the date of receipt entered by the clerk of the local government, or
   (B) consists of a letter from the local government indicating that all zoning or subdivision ordinances are met by the facility;

(2) for a new facility or modification of an existing facility, a written description of current and projected plans to reduce the emissions of air contaminants by source reduction and recycling ~~in accordance with~~ according to G.S. 143-215.108(g); the description shall include:
   (A) for an existing facility, a summary of activities related to source reduction and recycling and a quantification of air emissions reduced and material recycled during the previous year and a summary of plans for further source reduction and recycling; or
   (B) for a new facility, a summary of activities related to and plans for source reduction and recycling; and

(3) if required by the Director, information showing that:
   (A) The applicant is financially qualified to carry out the permitted activities, or
   (B) The applicant has substantially complied with the air quality and emissions standards applicable to any activity in which the applicant has previously been engaged, and has been in substantial compliance with federal and state environmental laws and rules.

(c) When to file application. For sources subject to the requirements of 15A NCAC 2D .0530 (prevention of significant deterioration) or .0531 (new source review for sources in nonattainment areas), applicants shall file air permit applications at least 180 days before the projected construction date. For all other sources, applicants shall file air permit applications at least 90 days before the projected date of construction of a new source or modification of an existing source.

(d) Permit renewal and ownership changes with no modifications. If no modification has been made to the originally permitted source, application for permit renewal or ownership change may be made by letter to the Director at the address specified in Rule .0104 of this Subchapter. The renewal or ownership change letter must state that there have been no changes in the permitted facility since the permit was last issued. However, the Director may require the applicant for ownership change to submit additional information showing that:

(1) The applicant is financially qualified to carry out the permitted activities, or

(2) The applicant has substantially complied with the air quality and emissions standards applicable to any activity in which the applicant has previously been engaged, and has been in substantial compliance with federal and state environmental laws and rules.

To make a name or ownership change, the applicant shall send the Director the number of copies of letters specified in Rule .0305(3) or (4) of this Section signed by a person specified in Paragraph (j) of this Rule.

(e) Applications for date and reporting changes. Application for changes in construction or test dates or reporting procedures may be made by letter to the Director at the address specified in Rule .0104 of this Section. To make changes in construction or test dates or reporting procedures, the applicant shall send the Director the number of copies of letters specified in Rule .0305(a)(5) of this Section signed by a person specified in Paragraph (j) of this Rule.

(f) When to file applications for permit renewal. Applicants shall file applications for renewals such that they are received by the Division at least 90 days before expiration of the permit.

(g) Ownership or name change. The permittee shall file requests for permit name or ownership changes as soon as the permittee is aware of the imminent name or ownership change.

(h) Number of copies of additional information. The applicant shall submit the same number of copies of additional information as required for the application package.

(i) Requesting additional information. Whenever the information provided on the permit application forms does not adequately describe the source and its air cleaning device, the Director may request that the applicant provide any other information that the Director considers necessary to evaluate the source and its air cleaning device. Before acting on any permit application, the Director may request any information from an

applicant and conduct any inquiry or investigation that he considers necessary to determine compliance with applicable standards.

(j) Signature on application. Permit applications submitted pursuant to this Rule shall be signed as follows:

(1) for corporations, by a principal executive officer of at least the level of vice-president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the emissions described in the permit application form originates;

(2) for partnership or limited partnership, by a general partner;

(3) for a sole proprietorship, by the proprietor;

(4) for municipal, state, federal, or other public entity, by a principal executive officer, ranking elected official, or other duly authorized employee.

(k) Application fee. With the exceptions specified in Rule .0203(i) of this Subchapter, a non-refundable permit application processing fee shall accompany each application. The permit application processing fees are defined in Section .0200 of this Subchapter. ~~Each~~ A permit application is incomplete until the permit application processing fee is received.

(l) Correcting submittals of incorrect information. An applicant has a continuing obligation to submit relevant facts pertaining to his permit application and to correct incorrect information on his permit application.

~~(l)~~ (m) Retaining copy of permit application package. The applicant shall retain for the duration of the permit term one complete copy of the application package and any information submitted in support of the application package.

Authority G.S. 143-215.3(a)(1); 143-215.108.

.0306 PERMITS REQUIRING PUBLIC PARTICIPATION

(a) The Director shall provide for public notice for comments with an opportunity to request a public hearing on draft permits for the following:

(1) any source that may be designated by the Director based on significant public interest relevant to air quality;

(2) a source to which 15A NCAC 2D .0530 or .0531 applies;

(3) a source whose emission limitation is based on a good engineering practice stack height that exceeds the height defined in 15A NCAC 2D .0533(a)(4)(A), (B), or (C);

(4) a source required to have controls more stringent than the applicable emission standards in 15A NCAC 2D .0500 ~~in accordance with~~ according to 15A NCAC 2D .0501 when necessary to comply with an ambient air quality standard under 15A NCAC 2D .0400;

~~(5) any physical or operational limitation on the capacity of the source to emit a pollutant, including air cleaning device and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, when such a limitation is necessary to avoid the applicability of rules in 15A NCAC 2D .0900 or 15A NCAC 2Q .0500;~~

~~(6)~~ (5) alternative controls different ~~than~~ from the applicable emission standards in 15A NCAC 2D .0900 ~~in accordance with~~ according to 15A NCAC 2D .0952;

~~(7) an alternate compliance schedule promulgated in accordance with 15A NCAC 2D .0910;~~

~~(8)~~ (6) a limitation on the quantity of solvent-borne ink that may be used by a printing unit or printing system ~~in accordance with~~ according to 15A NCAC 2D .0936;

~~(9)~~ (7) an allowance of a particulate emission rate of 0.08 grains per dry standard cubic foot for an incinerator constructed before July 1, 1987, ~~in accordance with~~ according to 15A NCAC 2D .1205(b)(2);

~~(10)~~ (8) an alternative mix of controls under 15A NCAC 2D .0501(f);

~~(11)~~ (9) a source that is subject to the requirements of 15A NCAC 2D .1109 because of 15A NCAC 2D .1109(e); or

~~(12)~~ (10) the owner or operator who requests that the draft permit go to public notice with an opportunity to request a public hearing.

~~(b) Failure of the owner or operator of a source permitted pursuant to this Rule to adhere to the terms and limitations of the permit shall be grounds for:~~

~~(1) enforcement action;~~

~~(2) permit termination, revocation and reissuance, or modification; or~~

~~(3) denial of permit renewal applications.~~

~~(c) All emissions limitations, controls, and other requirements imposed by a permit issued pursuant to this Rule shall be at least as stringent as any other applicable requirement as defined under Rule .0103 (effective date of July 1, 1994) of this Subchapter. The permit shall not waive or make less stringent any limitation or requirement contained in any applicable requirement.~~

~~(d) Emissions limitations, controls and requirements contained in permits issued pursuant to the Rule shall be permanent, quantifiable, and otherwise enforceable as a practical matter under G.S. 143-215.114A, 143-215.114B, and 143-215.114C.~~

~~(e)~~ (b) If EPA requires the State to submit a permit as part of the North Carolina State Implementation Plan for Air Quality (SIP) and if the Commission approves a permit containing any of the conditions described in Paragraph (a) of this Rule as a part of the SIP, the Director shall submit the permit to the EPA on behalf of the Commission for inclusion as part of the federally approved SIP.

Authority G.S. 143-215.3(a)(1),(3); 143-215.108; 143-215.114A; 143-215.114B; 143-215.114C.

.0309 TERMINATION, MODIFICATION AND REVOCATION OF PERMITS

(a) The Director may terminate, modify, or revoke and reissue any permit issued under this Section if:

(1) The information contained in the application or

presented in support thereof is determined to be incorrect;

(2) The conditions under which the permit or permit renewal was granted have changed;

(3) Violations of conditions contained in the permit have occurred;

(4) The permit holder fails to pay the fee required under Section .0200 of this Subchapter within 30 days after being billed;

(5) The permittee refuses to allow the Director or his authorized representative upon presentation of credentials:

(A) to enter, at reasonable times and using reasonable safety practices, the permittee's premises in which a source of emissions is located or in which any records are required to be kept under terms and conditions of the permit;

(B) to have access, at reasonable times, to any copy or records required to be kept under terms and conditions of the permit;

(C) to inspect, at reasonable times and using reasonable safety practices, any source of emissions, control equipment, and any monitoring equipment or method required in the permit; or

(D) to sample, at reasonable times and using reasonable safety practices, any emission source at the facility;

(6) The Director finds that termination, modification, or revocation and reissuance of a permit is necessary to carry out the purpose of G.S. 143, Article 21B.

(b) The permittee shall furnish the Division, in a timely manner, any reasonable information that the Director may request in writing to determine whether cause exists for terminating, modifying, or revoking and reissuing the permit or to determine compliance with the permit.

~~(b)~~ (c) The operation of a facility or source after its permit has been ~~revoked~~ terminated is a violation of this Section and G.S. 143-215.108.

~~(c)~~ (d) The permittee may request modifications to his permit.

(e) The filing of a request by a permittee for a permit termination, modification, revocation and reissuance, notification of planned changes, or anticipated noncompliance does not stay any permit term or condition.

~~(d)~~ (f) When a permit is modified, the proceedings shall affect only those parts of the permit that are being modified.

Authority G.S. 143-215.3(a)(1),(1a),(1b); 143-215.108; 143-215.114A; 143-215.114B; 143-215.114C.

.0314 GENERAL PERMIT REQUIREMENTS

(a) All emissions limitations, controls, and other requirements imposed by a permit issued pursuant to this Section shall be at least as stringent as any other applicable requirement as defined under Rule .0103 of this Subchapter. The permit shall not waive or make less stringent any limitation or requirement contained in any applicable requirement.

(b) Emissions limitations, controls and requirements contained in permits issued pursuant to the Section shall be permanent, quantifiable, and otherwise enforceable as a practical matter under G.S. 143-215.114A, 143-215.114B, and 143-215.114C.

(c) The owner or operator of a source permitted under this Section shall comply with the permit. Failure of the owner or operator of a permitted source to adhere to the terms and conditions of the permit shall be grounds for:

(1) enforcement action;

(2) permit termination, revocation and reissuance, or modification; or

(3) denial of permit renewal applications.

(d) A permit does not convey any property rights of any sort, or any exclusive privileges.

Authority G.S. 143-215.3(a)(1); 143-215.108.

.0315 SYNTHETIC MINOR FACILITIES

(a) A synthetic minor facility is a facility whose permit contains terms and conditions to avoid the procedures of 15A NCAC 2Q .0500, Title V Procedures.

(b) The owner or operator of a facility to which 15A NCAC 2Q .0500, Title V Procedures, applies may choose to have terms and conditions placed in his permit to restrict operation to limit the potential to emit of the facility in order to remove the applicability of 15A NCAC 2Q .0500 to the facility. An application for the addition of such terms and conditions shall be processed under this Section.

(c) A modification to a permit to remove terms and conditions in the permit that removed the applicability of 15A NCAC 2Q .0500 shall be processed under either this Section or 15A NCAC 2Q .0500. The applicant shall choose which procedures to follow. However, if the terms and conditions are removed following the procedures of this Section, the permittee shall submit a permit application under the procedures of 15A NCAC 2Q .0500 within one year after the limiting terms and conditions are removed.

(d) After a facility is issued a permit that contains terms and conditions to remove the applicability of 15A NCAC 2Q .0500, the facility shall comply with the permitting requirements of this Section.

(e) The Director may require monitoring, recordkeeping, and reporting necessary to assure compliance with the terms and conditions placed in the permit to remove the applicability of 15A NCAC 2Q .0500.

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(10); 143-215.108.

SECTION .0400 - ACID RAIN PROCEDURES

.0401 PURPOSE AND APPLICABILITY

(a) The purpose of this Rule is to implement Phase II of the federal acid rain program pursuant to the requirements of Title IV of the Clean Air Act as provided in 40 CFR ~~Part 72.~~ Parts 72 and 76.

~~(b) The procedures and requirements under this Section do~~

~~not apply until the EPA approves this Section and Section .0500 of this Subchapter.~~

~~(c)~~ (b) Applicability.

(1) Each of the following units shall be an affected unit, and any facility that includes such a unit shall be an affected facility, subject to the requirements of the Acid Rain Program:

(A) A unit listed in 40 CFR Part 73, Subpart B, Table 1.

(B) A unit that is identified as qualifying for an allowance allocation under 40 CFR 73.10 Table 2 or 3 and any other existing utility unit, except a unit under Subparagraph (2) of this Paragraph.

(C) A utility unit, except a unit under Subparagraph (2) of this Paragraph, that:

(i) is a new unit;

(ii) did not serve a generator with a nameplate capacity greater than 25 MWe on November 15, 1990, but serves such a generator after November 15, 1990;

(iii) was a simple combustion turbine on November 15, 1990 but adds or uses auxiliary firing after November 15, 1990;

(iv) was an exempt cogeneration facility under Part (2)(D) of this Paragraph but during any three calendar year period after November 15, 1990, sold to a utility power distribution system, an annual average of more than one third of its potential electrical out-put capacity and more than 219,000 MWe-hrs electric output, on a gross basis;

(v) was an exempt qualifying facility under Part (2)(E) of this Paragraph but at any time after the later of November 15, 1990, or the date the facility commences commercial operation, fails to meet the definition of qualifying facility;

(vi) was an exempt independent power production facility under Part (2)(F) of this Paragraph but at any time after the later of November 15, 1990, or the date the facility commences commercial operation, fails to meet the definition of independent power production facility; or

(vii) was an exempt solid waste incinerator under Part (2)(G) of this Paragraph but during any three calendar year period after November 15, 1990, consumes 20 percent or more (on a Btu basis) fossil fuel.

(2) The following types of units are not affected units subject to the requirements of the Acid Rain Program:

(A) A simple combustion turbine that commenced operation before November 15, 1990.

(B) Any unit that commenced commercial operation before November 15, 1990, and that did not, as of November 15, 1990, and does not currently, serve a generator with a nameplate capacity of greater than 25 MWe.

(C) Any unit that, during 1985, did not serve a generator that produced electricity for sale and that did not, as of November 15, 1990, and does not currently, serve a generator that produces electricity for sale.

(D) A co-generation facility which:

(i) for a unit that commenced construction on or prior to November 15, 1990, was constructed for the purpose of supplying equal to or less than one-third its potential electrical output capacity or equal to or less than 219,000 MWe-hrs actual electrical output on an annual basis to any utility power distribution system for sale (on a gross basis). If the purpose of construction is not known, it will be presumed to be consistent with actual operation from 1985 through 1987. However, if in any three calendar year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electrical output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the Acid Rain Program, or

(ii) for units that commenced construction after November 15, 1990, supplies equal to or less than one-third its potential electrical output capacity or equal to or less than 219,000 MWe-hrs actual electrical output on an annual basis to any utility power distribution system for sale (on a gross basis). However, if in any three calendar year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electrical output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the Acid Rain Program.

(E) A qualifying facility that:

(i) has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15 percent of its total planned net output capacity;

and

(ii) consists of one or more units designed by the owner or operator with total installed net output capacity not exceeding 130 percent of the total planned net output capacity. If the emissions rates of the units are not the same, the Administrator shall designate which units are exempt.

(F) An independent power production facility that:

(i) has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15 percent of its total planned net output capacity; and

(ii) consists of one or more units designed by the owner or operator with total installed net output capacity not exceeding 130 percent of the total planned net output capacity. If the emissions rates of the units are not the same, the Administrator shall designate which units are exempt.

(G) A solid waste incinerator, if more than 80 percent (on a Btu basis) of the annual fuel consumed at such incinerator is other than fossil fuels. For a solid waste incinerator which began operation before January 1, 1985, the average annual fuel consumption of non-fossil fuels for calendar years 1985 through 1987 must be greater than 80 percent for such an incinerator to be exempt. For a solid waste incinerator which began operation after January 1, 1985, the average annual fuel consumption of non-fossil fuels for the first three years of operation must be greater than 80 percent for such an incinerator to be exempt. If, during any three calendar year period after November 15, 1990, such incinerator consumes 20 percent or more (on a Btu basis) fossil fuel, such incinerator will be an affected source under the Acid Rain Program.

(H) A non-utility unit.

(3) A certifying official of any unit may petition the Administrator for a determination of applicability under 40 CFR 72.6(c). The Administrator's determination of applicability shall be binding upon the Division, unless the petition is found to have contained significant errors or omissions.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

.0402 ACID RAIN PERMITTING PROCEDURES

(a) For the purpose of this Rule the definitions contained in 40 CFR 72.2 and 76.2 and the measurements, abbreviations, and acronyms contained in 40 CFR 72.3 shall apply.

(b) Affected units as defined in 40 CFR ~~72.6 and~~ 72.6, 76.1, or Paragraph ~~(c)~~ (b)(1) of Rule .0401 of this Section shall comply with the permit, monitoring, sulfur dioxide, nitrogen oxides, excess emissions, recordkeeping and reporting, liability, and any other provisions as required in 40 CFR ~~Part 72.~~ Part 72 and 76. The term "permitting authority" shall mean Division of Environmental Management, and the term "Administrator" shall mean the Administrator of the United States Environmental Protection Agency.

(c) If the provisions or requirements of 40 CFR Part 72 or 76 conflict with or are not included in Section .0500 of this Subchapter, ~~the~~ then Part 72 or 76 provisions and requirements shall apply and take precedence.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(8); 143-215.108.

SECTION .0500 - TITLE V PROCEDURES

.0511 SYNTHETIC MINOR FACILITIES

~~(a) The owner or operator of a facility to which this Section applies may choose to have terms and conditions placed in his permit to restrict operation to limit the potential to emit of the facility in order to remove the applicability of this Section to the facility.~~

~~(b) Any permit containing terms and conditions to remove the applicability of this Section after one year after EPA approves this Section shall be processed according to Rules .0521 and .0522 of this Section when these terms and conditions are first placed in the permit.~~

~~(c) After a facility is issued a permit that contains terms and conditions to remove the applicability of this Section, the facility shall comply with the permitting requirements of Section .0300 of this Subchapter.~~

~~(d) If the holder of a permit for a synthetic minor facility applies to change a term or condition that removed his facility from the applicability of this Section, the application shall be processed under this Section.~~

~~(e) The Director may require monitoring, recordkeeping, and reporting necessary to assure compliance with the terms and conditions placed in the permit to remove the applicability of this Section.~~

Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(10); 143-215.108.

SECTION .0800 - EXCLUSIONARY RULES

.0801 PURPOSE AND SCOPE

(a) The purpose of this Section is to define categories of facilities that are exempted from needing a permit under Section .0500, Title V Procedures, of this Subchapter or the applicability of 15A NCAC 2D .1111 or 40 CFR Part 63 by defining their potential emissions to be less than:

(1) 100 tons per year of each regulated air pollutant;

(2) 10 tons per year of each hazardous air pollutant; and

(3) 25 tons per year of all hazardous air pollutants combined;

as determined by criteria set out in each individual source

category rule. [A particular maximum achievable control technology (MACT) standard promulgated under 40 CFR Part 63 may have a lower applicability threshold than those contained in this Paragraph. The threshold contained in that MACT standard shall be used to determine the applicability of that MACT standard.]

(b) Coverage under the rules of this Section is voluntary. The owner or operator of a facility or source qualified to be covered under a rule in this Section that does not want to be covered under that rule shall notify the Director in writing that he does not want his facility covered under this Section, and the Section shall no longer apply to that facility or source.

~~(b)~~ (c) A source cannot rely on emission limits or caps contained in this Section to justify violation of any rate-based emission limits or other applicable requirements.

~~(c)~~ (d) Although a facility is exempted, by complying with this Section, from the permitting procedures contained in Section .0500, Title V Procedures, of this Subchapter, or the applicability of 15A NCAC 2D .1111 or 40 CFR Part 63, it may still need a permit under Section .0300, Construction and Operation Permit, of this Subchapter unless it is exempted from needing a permit by Rule .0102 of this Subchapter.

(e) Except for gasoline service stations and dispensing facilities and dry cleaning facilities, any facility or source not required to have a permit under this Subchapter shall not be required to maintain records and report emissions as required under this Section.

Authority G.S. 143-215.3(a); 143-215.107(a)(10); 143-215.108.

.0803 COATING, SOLVENT CLEANING, GRAPHIC ARTS OPERATIONS

(a) For the purposes of this Rule, the following definitions apply:

(1) "Coating operation" means a process in which paints, enamels, lacquers, varnishes, inks, dyes, glues, and other similar materials are applied to wood, paper, metal, plastic, textiles, or other types of substrates.

(2) "Solvent cleaning operation" means the use of solvents containing volatile organic compounds to clean soils from metal, plastic, or other types of surfaces.

(3) "Graphic arts operation" means the application of inks to form words, designs, or pictures to a substrate, usually by a series of application rolls each with only partial coverage and usually using letterpress, offset lithography, rotogravure, or flexographic process.

(b) Potential emissions for a coating operation, solvent cleaning operation, or graphic arts operation shall be determined using actual emissions without accounting for any air pollution control devices to reduce emissions of volatile organic compounds or hazardous air pollutants including perchloroethylene from the coating operation, solvent cleaning operation or graphic arts operation. All volatile organic compounds and hazardous air pollutants that are also volatile organic compounds and perchloroethylene are assumed to evaporate and be emitted into the atmosphere at the source.

(c) Paragraphs (d) through (k) of this Rule do not apply to any facility whose potential emissions are greater than or equal to:

(1) 100 tons per year of each regulated air pollutant;

(2) 10 tons per year of each hazardous air pollutant; or

(3) 25 tons per year of all hazardous air pollutants combined;

as determined by criteria set out in each individual source category rule. [A particular maximum achievable control technology (MACT) standard promulgated under 40 CFR Part 63 may have a lower applicability threshold than those contained in this Paragraph. The threshold contained in that MACT standard shall be used to determine the applicability of that MACT standard.]

~~(c)~~ (d) ~~The~~ With the exception of Paragraph (c) of this Rule, the owner or operator of a coating, solvent cleaning, or graphics arts operation ~~located at a facility not required to have a permit under Section .0500, Title V Procedures, of this Subchapter in accordance with Rule .0502, Applicability, of this Subchapter~~ shall be exempted from the requirements of Section .0500 of this Subchapter, provided the owner or operator of the facility complies with Paragraphs (e) through (i) of this Rule, as appropriate.

~~(d)~~ (e) Only Paragraph (b) of this Rule applies to coating operations, solvent ~~clean~~ cleaning operations, or graphic arts operations that are exempted from needing a permit under Rule .0102 of this Subchapter.

~~(e)~~ (f) The owner or operator of a facility whose potential emissions:

(1) of volatile organic compounds are less than 100 tons per year but more than or equal to 75 tons per year;

(2) of each hazardous air pollutant is less than 10 tons per year but more than or equal to 7.5 tons per year; or

(3) of all hazardous air pollutants combined are less than 25 tons per year but more than or equal to 18 tons per year;

shall maintain records and submit reports as described in Paragraphs (f) and (i) of this Rule.

~~(f)~~ (g) For facilities covered under Paragraph (e) of this Rule, the owner or operator shall:

(1) maintain monthly consumption records of each material used containing volatile organic compounds as follows:

(A) quantity of volatile organic compound in pounds per gallon of each material used,

(B) pounds of volatile organic compounds of each material used per month and total pounds of volatile organic compounds of each material used during the 12-month period ending on that month,

(C) quantity of each hazardous air pollutant in pounds per gallon of each material used,

(D) pounds of each hazardous air pollutant of each material used per month and total pounds of each hazardous air pollutant of each material used during the 12-month period ending on that month,

(E) quantity of all hazardous air pollutants in pounds per gallon of each material used, and

(F) pounds of all hazardous air pollutants of each

material used per month and total pounds of all hazardous air pollutants of each material used during the 12-month period ending on that month; and

(2) submit to the Director each quarter, or more frequently if required by a permit condition, a report summarizing emissions of volatile organic compounds and hazardous air pollutants containing the following:

(A) pounds volatile organic compounds used:

(i) for each month during the quarter, and

(ii) for each 12-month period ending on each month during the quarter using the 12-month rolling average method;

(B) greatest quantity in pounds of an individual hazardous air pollutant used:

(i) for each month during the quarter, and

(ii) for each 12-month period ending on each month during the quarter using the 12-month rolling average method; and

(C) pounds of all hazardous air pollutants used:

(i) for each month during the quarter, and

(ii) for each 12-month period ending on each month during the quarter using the 12-month rolling average method.

~~(g)~~ (h) The owner or operator of a facility whose potential emissions:

(1) of volatile organic compounds are less than 75 tons per year,

(2) of each hazardous air pollutants is less than 7.5 tons per year, and

(3) of all hazardous air pollutants combined are less than 18 tons per year,

shall maintain records and submit reports as described in Paragraphs (h) and (i) of this Rule.

~~(h)~~ (i) For facilities covered under Paragraph (g) of this Rule, the owner or operator shall submit to the Director by February 15th of each year, or more frequently if required by a permit condition, a report summarizing emissions of volatile organic compounds and hazardous air pollutants containing the following:

(1) pounds volatile organic compounds used during the previous calendar year,

(2) pounds of the highest individual hazardous air pollutant used during the previous year, and

(3) pounds of all hazardous air pollutants used during the previous year.

~~(i)~~ (j) In addition to the specific reporting requirements for sources covered under Paragraphs (e) and (g) of this Rule, the owner or operator of the source shall:

(1) maintain purchase orders and invoices of materials containing volatile organic compounds, which shall be made available to the Director upon request to confirm the general accuracy of the reports filed under Paragraphs (f) or (h) of this Rule regarding materials usage;

(2) retain purchase orders and invoices for a period of at least three years;

(3) report to the Director any exceedance of a requirement of this Rule within one week of occurrence; and

(4) certify all submittals as to the truth, completeness, and accuracy of all information recorded and reported over the signature of the appropriate official as identified in Rule .0304(j) of this Subchapter.

~~(j)~~ (k) Copies of all records required to be maintained under Paragraphs (f), (h) or (i) of this Rule shall be maintained at the facility and shall be available for inspection by personnel of the Division on demand.

~~(k)~~ (l) The Director shall maintain a list of facilities covered under this Rule.

Authority G.S. 143-215.3(a); 143-215.107(a)(10); 143-215.108.

.0808 PEAK SHAVING GENERATORS

(a) This Rule applies to facilities whose only sources requiring a permit is one or more peak shaving generators and their associated fuel storage tanks.

(b) For the purpose of this Rule, potential emissions shall be determined using actual total energy production.

(c) Any facility whose total energy production from one or more peak shaving generators is less than or equal to 6,500,000 kw-hrs per year shall be exempted from the requirements of Section .0500 of this Subchapter.

(d) The owner or operator of any peak shaving generator exempted by this Rule from Section .0500 of this Subchapter shall submit, by February 15th of each year a report containing the following information:

(1) the name and location of the facility;

(2) the number and size of all peak shaving generators located at the facility;

(3) the total number of hours of operation of all peak shaving generators located at the facility;

(4) the actual total amount of energy production per year from all peak shaving generators located at the facility; and

(5) the signature of the appropriate official as identified in Rule .0304(j) of this Subchapter certifying as to the truth and accuracy of the report.

(e) The owner or operator of any facility exempted by this Rule from Section .0500 of this Subchapter shall provide documentation of number, size, number of hours of operation, and amount of total energy production per rolling 12-month period from all peak shaving generators located at the facility to the Director upon request. The owner or operator of a facility exempted by this Rule from Section .0500 of this Subchapter shall retain records to document the amount of total energy production per year for the previous three years.

(f) For facilities covered by this Rule, the owner or operator shall report to the Director any exceedance of a requirement of this Rule within one week of its occurrence.

Authority G.S. 143-215.3(a); 143-215.107(a)(10); 143-215.108.

* *

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the NC Marine Fisheries Commission intends to adopt the rules cited as 15A NCAC 3M .0515; 3P .0301-0304; amend*

the rules cited as 15A NCAC 3I .0101; 3J .0107, and .0109; 3M .0503, .0507; 3O .0303, .0306; 3P .0201-.0203; and repeal the rule cited as 15 NCAC 3P .0103. Notice of Rule-making Proceedings was published in the Register on ***April 1, 1998*** *for 15 NCAC 3M .0503 and 3O .0306;* ***June 1, 1998*** *for 15A NCAC 3I .0101; 3J .0107, .0109; 3M .0503, .0507, .0515; 3O .0303, .0306; 3P .0103, .0201-.0203, .0301-.0304.*

Proposed Effective Date: *April 1, 1999*

Public Hearings *will be conducted at 7:00 p.m. and will be followed by a public meeting at the following locations:*

August 20, 1998
High Point, NC
Radisson
135 South Main Street

August 25, 1998
Manteo, NC
Airport Road

September 10, 1998
Beaufort, NC
Duke University Marine Lab
Pivers Island

September 21, 1998
Wilmington, NC
UNCW
Cameron
601 S. College Road

Reason for Proposed Action:

15A NCAC 3I .0101*: This amendment will define long haul and swipe net operations and gear associated with these operations.*

15A NCAC 3J .0107*: This amendment will require escape panels in flounder pound nets. These panels allow small, undersize flounder to escape capture.*

15A NCAC 3J .0109*: This amendment will require escape panels in long haul nets. These panels will allow small, juvenile fish to escape capture.*

15A NCAC 3M .0503*: Two recent joint Atlantic States Marine Fisheries Commission/Mid-Atlantic Fishery Management Council actions require that North Carolina adopt these amendments to remain in compliance with the Summer Flounder, Scup and Black Sea Bass Fishery Management Plan. Amendments to G.S. 143B-289.52(e) included in the Fisheries Reform Act of 1997 includes the authority of the Marine Fisheries Commission to adopt rules to maintain compliance.*

15A NCAC 3M .0507*: Adoption of an interim rule by the National Marine Fisheries Service increasing the size limit for blue and white marlin allows the Marine Fisheries Commission to adopt a rule to comply with these increases in size. Amendment of this rule to delete references to dolphin will be necessary if 15A NCAC 3M .0515 is adopted.*

15A NCAC 3M .0515*: Adoption of this rule will prevent expansion of the harvest of dolphin by the longline fishery and prevent user conflict.*

15A NCAC 3O .0303*: The 1997 Fisheries Reform Act added the vessel endorsement to sell as a license to be placed under the moratorium. (From 1994-1997, the moratorium applied to vessel licenses, crab licenses, shellfish licenses, and non-vessel endorsements to sell.) The Appeals Panel operating rules adopted by the Commission need to be amended to take this recent change into account.*

15A NCAC 3O .0306*: Prior to the Fisheries Reform Act of 1997, the Appeals Panel, in their review of petitions for new licenses, denied applications for subsistence purposes because licensees were entitled to obtain endorsement to sell licenses and enter the fishery with participants who fish and sell their catch. The Fisheries Reform Act placed a moratorium on the issuance of Endorsement to Sell Licenses. Therefore, the Appeals Panel can now issue hardship licenses to individuals who need the license for subsistence without being concerned that those individuals can obtain an Endorsement to Sell Licenses. The subsistence license would entitle the licensee to harvest resources with limited commercial gear at recreational limits. The 1997 Fisheries Reform Act added the vessel endorsement to sell as a license to be placed under the moratorium. (From 1994-1997, the moratorium applied to vessel licenses, crab licenses, shellfish licenses, and non-vessel endorsements to sell.) The Appeals Panel operating rules adopted by the Commission need to be amended to take this recent change into account.*

15A NCAC 3P .0103*: Petitions for Regulatory Activity will be in a new section - 15A NCAC 3P .0300.*

15A NCAC 3P .0201-.0203*: Required by G.S. 150B-4 to outline the circumstances in which declaratory rulings shall or shall not be issued.*

15A NCAC 3P .0301-.0304*: To clarify the regulatory petition process.*

Comment Procedures: *Comments, both written and oral, may be submitted at the four scheduled public hearings. Written comments are encouraged and may be submitted to the Marine Fisheries Commission, Juanita Gaskill, PO Box 769, Morehead City, NC 28557. These written and oral comments must be received no later than October 2, 1998. Oral presentation lengths may be limited, depending on the number of people that wish to speak at the public hearings. The Marine Fisheries Commission will hold public meetings at the conclusion of each of the four public hearings to receive public comments on limits (gear and fish) for recreational commercial gear licenses, coastal habitat protection plans, and other topics of interest to the public.*

Fiscal Note: *These Rules do not affect the expenditures or revenues of state or local government funds. These Rules do not have a substantial economic impact of at least five million dollars ($5,000,000) in a 12-month period.*

CHAPTER 3 - MARINE FISHERIES

SUBCHAPTER 3I - GENERAL RULES

SECTION .0100 - GENERAL RULES

.0101 DEFINITIONS

(a) All definitions set out in G.S. 113, Subchapter IV apply to this Chapter.

(b) The following additional terms are hereby defined:

(1) Commercial Fishing Equipment. All fishing equipment used in coastal fishing waters except:
- (A) Seines less than 12 feet in length;
- (B) Spears;
- (C) A dip net having a handle not more than eight feet in length and a hoop or frame to which the net is attached not exceeding 60 inches along the perimeter;
- (D) Hook-and-line and bait-and-line equipment other than multiple-hook or multiple-bait trotline;
- (E) A landing net used to assist in taking fish when the initial and primary method of taking is by the use of hook and line; and
- (F) Cast Nets.

(2) Fixed or stationary net. A net anchored or staked to the bottom, or some structure attached to the bottom, at both ends of the net.

(3) Mesh Length. The diagonal distance from the inside of one knot to the outside of the other knot, when the net is stretched hand-tight.

(4) Possess. Any actual or constructive holding whether under claim of ownership or not.

(5) Transport. Ship, carry, or cause to be carried or moved by public or private carrier by land, sea, or air.

(6) Use. Employ, set, operate, or permit to be operated or employed.

(7) Purse Gill Nets. Any gill net used to encircle fish when the net is closed by the use of a purse line through rings located along the top or bottom line or elsewhere on such net.

(8) Gill Net. A net set vertically in the water to capture fish by entanglement by the gills in its mesh as a result of net design, construction, mesh size, webbing diameter or method in which it is used.

(9) Seine. A net set vertically in the water and pulled by hand or power to capture fish by encirclement and confining fish within itself or against another net, the shore or bank as a result of net design, construction, mesh size, webbing diameter, or method in which it is used.

(10) Internal Coastal Waters or Internal Waters. All coastal fishing waters except the Atlantic Ocean.

(11) Channel Net. A net used to take shrimp which is anchored or attached to the bottom at both ends or with one end anchored or attached to the bottom and the other end attached to a boat.

(12) Dredge. A device towed by engine power consisting of a frame, tooth bar or smooth bar, and catchbag used in the harvest of oysters, clams, crabs, scallops, or conchs.

(13) Mechanical methods for clamming. Includes, but not limited to, dredges, hydraulic clam dredges, stick rakes and other rakes when towed by engine power, patent tongs, kicking with propellers or deflector plates with or without trawls, and any other method that utilizes mechanical means to harvest clams.

(14) Mechanical methods for oystering. Includes, but not limited to, dredges, patent tongs, stick rakes and other rakes when towed by engine power and any other method that utilizes mechanical means to harvest oysters.

(15) Depuration. Purification or the removal of adulteration from live oysters, clams, and mussels by any natural or artificially controlled means.

(16) Peeler Crab. A blue crab that has a soft shell developing under a hard shell and having a definite pink, white, or red line or rim on the outer edge of the back fin or flipper.

(17) Length of finfish:
- (A) Total length is determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the tip of the compressed caudal (tail) fin.
- (B) Fork length is determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the middle of the fork in the caudal (tail) fin.
- (C) Fork length for billfish is measured from the tip of the lower jaw to the middle of the fork of the caudal (tail) fin.

(18) Licensee. Any person holding a valid license from the Department to take or deal in marine fisheries resources.

(19) Aquaculture operation. An operation that produces artificially propagated stocks of marine or estuarine resources or obtains such stocks from authorized sources for the purpose of rearing in a controlled environment. A controlled environment provides and maintains throughout the rearing process one or more of the following: predator protection, food, water circulation, salinity, or temperature controls utilizing proven technology not found in the natural environment.

(20) Critical habitat areas. The fragile estuarine and marine areas that support juvenile and adult populations of economically important seafood species, as well as forage species important in the food chain. Critical habitats include nursery areas, beds of submerged aquatic vegetation, shellfish producing areas, anadromous fish spawning and anadromous fish nursery areas, in all coastal fishing waters as determined through marine and estuarine survey sampling. Critical habitats are vital for portions, or the entire life cycle, including the early growth and development of important seafood species.
- (A) Beds of submerged aquatic vegetation are those habitats in public trust and estuarine waters vegetated with one or more species of submerged vegetation such as eelgrass (Zostera

marina), shoalgrass (Halodule wrightii) and widgeongrass (Ruppia maritima). These vegetation beds occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the presence of above-ground leaves or the below-ground rhizomes and propagules together with the sediment on which the plants grow. In defining beds of submerged aquatic vegetation, the Marine Fisheries Commission recognizes the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.) and does not intend the submerged aquatic vegetation definition and its implementing rules to apply to or conflict with the non-development control activities authorized by that Act.

(B) Shellfish producing habitats are those areas in which economically important shellfish, such as, but not limited to clams, oysters, scallops, mussels, and whelks, whether historically or currently, reproduce and survive because of such favorable conditions as bottom type, salinity, currents, cover, and cultch. Included are those shellfish producing areas closed to shellfish harvest due to pollution.

(C) Anadromous fish spawning areas are defined as those areas where evidence of spawning of anadromous fish has been documented by direct observation of spawning, capture of running ripe females, or capture of eggs or early larvae.

(D) Anadromous fish nursery areas are defined as those areas in the riverine and estuarine systems utilized by post-larval and later juvenile anadromous fish.

(21) Intertidal Oyster Bed. A formation, regardless of size or shape, formed of shell and live oysters of varying density.

(22) North Carolina Trip Ticket. Multiple-part form provided by the Department to fish dealers who are required to record and report transactions on such forms.

(23) Transaction. Act of doing business such that fish are sold, offered for sale, exchanged, bartered, distributed or landed. The point of landing shall be considered a transaction when the fisherman is the fish dealer.

(24) Live rock. Living marine organisms or an assemblage thereof attached to a hard substrate including dead coral or rock (excluding mollusk shells). For example, such living marine organisms associated with hard bottoms, banks, reefs, and live rock may include, but are not limited to:

(A) Animals:

(i) Sponges (Phylum Porifera);

(ii) Hard and Soft Corals, Sea Anemones (Phylum Cnidaria):

(I) Fire corals (Class Hydrozoa);

(II) Gorgonians, whip corals, sea pansies, anemones, Solenastrea (Class Anthozoa);

(iii) Bryozoans (Phylum Bryozoa);

(iv) Tube Worms (Phylum Annelida):

(I) Fan worms (Sabellidae);

(II) Feather duster and Christmas tree worms (Serpulidae);

(III) Sand castle worms (Sabellaridae).

(v) Mussel banks (Phylum Mollusca:Gastropoda);

(vi) Colonial barnacles (Arthropoda: Crustacea: Megabalanus sp.).

(B) Plants:

(i) Coralline algae (Division Rhodophyta);

(ii) Acetabularia sp., Udotea sp., Halimeda sp., Caulerpa sp. (Division Chlorophyta);

(iii) Sargassum sp., Dictyopteris sp., Zonaria sp. (Division Phaeophyta).

(25) Coral:

(A) Fire corals and hydrocorals (Class Hydrozoa);

(B) Stony corals and black corals (Class Anthozoa, Subclass Scleractinia);

(C) Octocorals; Gorgonian corals (Class Anthozoa, Subclass Octocorallia):

(i) Sea fans (Gorgonia sp.);

(ii) Sea whips (Leptogorgia sp. and Lophogorgia sp.);

(iii) Sea pansies (Renilla sp.).

(26) Shellfish production on leases and franchises:

(A) The culture of oysters, clams, scallops, and mussels, on shellfish leases and franchises from a sublegal harvest size to a marketable size.

(B) The transplanting (relay) of oysters, clams, scallops and mussels from designated areas closed due to pollution to shellfish leases and franchises in open waters and the natural cleansing of those shellfish.

(27) Shellfish marketing from leases and franchises. The harvest of oysters, clams, scallops, mussels, from privately held shellfish bottoms and lawful sale of those shellfish to the public at large or to a licensed shellfish dealer.

(28) Shellfish planting effort on leases and franchises. The process of obtaining authorized cultch materials, seed shellfish, and polluted shellfish stocks and the placement of those materials on privately held shellfish bottoms for increased shellfish production.

(29) Pound Net. A fish trap consisting of a holding pen, one or more enclosures, and a lead or leaders. The lead(s), enclosures, and holding pen are not conical, nor are they supported by hoops or frames.

(30) Educational Institution. A college, university or community college accredited by a regional accrediting institution.

(31) Long Haul Operations. A haul seine towed between two boats.

(32) Swipe Net Operations. A haul seine towed by one boat.

(33) Bunt Net. The last encircling net of a long haul or swipe net operation constructed of small mesh webbing. The bunt net is used to form a pen or pound from which the catch is dipped or bailed.

Authority G.S. 113-134; 143B-289.4.

SUBCHAPTER 3J - NETS, POTS, DREDGES, AND OTHER FISHING DEVICES

SECTION .0100 - NET RULES, GENERAL

.0107 POUND NETS

(a) It is unlawful to use pound or fyke nets in internal coastal fishing waters without the owner's identification being clearly printed on a sign no less than six inches square, securely attached on an outside corner stake of each such net. Such identification must include one of the following:

(1) For pound nets, the pound net permit number and the owner's last name and initials.

(2) For fyke nets, the owner's N.C. motorboat registration number or the owner's last name and initials.

Any pound or fyke net or any part thereof found set in internal coastal fishing waters without proper identification will be in violation and may be removed and disposed of in accordance with G.S. 113-137.

(b) It is unlawful to set pound nets, or any part thereof except location identification stakes at each end of proposed new locations without first obtaining a Pound Net Permit from the Fisheries Director.

(1) For proposed new locations, the Fisheries Director shall issue a public notice of intent to consider issuance of a Pound Net Permit, and may hold public meetings to take comments on the proposed pound net set. The Fisheries Director shall approve or deny the permit within 60 days of application. The Fisheries Director may deny the permit application if it is determined that granting the permit will be inconsistent with one or more of the following permitting criteria:

(A) The application is in the name of an individual.

(B) The proposed pound net set, either alone or when considered cumulatively with other existing pound net sets in the area, will not unduly interfere with public navigation.

(C) The proposed pound net set, either alone or when considered cumulatively with other existing pound net sets in the area, will not unduly interfere with existing, traditional uses of the area other than navigation.

(D) The proposed pound net set will not interfere with the rights of any riparian or littoral landowner, including the construction or use of piers.

(E) The proposed pound net set will not, by its proximate location, unduly interfere with existing pound net sets in the area.

(F) The applicant has in the past complied with fisheries laws related to pound nets.

(G) The proposed pound net set is in the public interest.

Approval may be conditional based upon the applicant's continuing compliance with specific conditions contained in the Pound Net Permit that would ensure that the operation of the pound net is consistent with the criteria for permit denial set out in Parts (A) through (G) of this Subparagraph. The Fisheries Director's final decision to approve or deny the Pound Net Permit application may be appealed by filing a petition for a contested case hearing, in writing, within 60 days notice of such action, with the Office of Administrative Hearings.

(2) An application for renewal of an existing Pound Net Permit shall be filed not less than 10 days prior to the date of expiration of the existing permit, and shall not be processed unless filed by the prior permittee. When a written objection to a renewal has been received during the term of the existing permit, the Fisheries Director shall review the renewal application under the criteria for issuance of a new Pound Net Permit, and may decline to renew the permit accordingly.

(3) A Pound Net Permit, whether a new or renewal permit, shall expire 365 days from the date of issuance.

(c) It is unlawful to abandon an existing pound net set without completely removing from the public bottom or coastal waters all stakes and associated structures, gear and equipment within 30 days, or to fail within 30 days to completely remove from the public bottom or coastal waters all stakes and other structures, gear and equipment associated with any pound net set for which a permit is revoked or denied. Pound nets shall be fully operational and subject to inspection during the peak of their respective fishing seasons. Consideration shall be given for unusually severe weather conditions which prevent the nets from being fully operational during the inspection period. Herring pounds may be inspected two weeks prior to or after April 1, sciaenid pounds two weeks prior to or after July 15, flounder pounds two weeks prior to or after October 15, bait pounds two weeks prior to or after April 15, and shrimp pounds two weeks prior to or after June 15. A violation under this Paragraph shall be grounds for the Fisheries Director to revoke any other Pound Net Permits held by the violator and for denial of any future pound net set proposed by the offender.

(d) It is unlawful to transfer ownership of a pound net without notification to the Division of Marine Fisheries within 30 days of the date of the transfer. Such notification shall be made by the new owner in writing and shall be accompanied by a copy of the previous owner's permit and an application for a pound net permit in the new owner's name. Failure to do so shall result in revocation of the pound net permit.

(e) Every pound net set shall have a marked navigational

opening of at least 25 feet in width at the end of every third pound. Such opening shall be marked with yellow light reflective tape or devices on each side of the opening. The light reflective tape or devices shall be affixed to a stake of at least three inches in diameter, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions by a vessel approaching the pound net set. In addition, every pound net in internal coastal fishing waters shall have yellow light reflective tape or devices on each pound. The light reflective tape or devices shall be affixed to a stake of at least three inches in diameter on the offshore end of each pound, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions by a vessel approaching the pound net set. If a permittee notified of a violation under this Paragraph fails or refuses to take corrective action sufficient to remedy the violation within 15 days of receiving notice of the violation, the Fisheries Director shall revoke the permit.

(f) In Core Sound, it is unlawful to use pound nets in the following areas except that only those persons holding a valid pound net permit within the specified area as of March 1, 1994, may renew their permits subject to the requirements of this Rule:

(1) That area bounded by a line beginning at Green Day Marker #3 near Hog Island Point running 124° (M) to Green Flasher #13; thence 026° (M) to Green Flasher #11; thence 294° (M) to a point on shore north of Great Ditch 34° 58′ 54″ N - 76° 15′ 06″ W; thence following the shoreline to Hog Island Point 34° 58′ 27″ N - 76° 15′ 49″ W; thence 231° (M) back to Green Day Marker #3.

(2) That area bounded by a line beginning at Green Day Marker #3 near Hog Island Point running 218° (M) to Cedar Island Point 34° 57′ 33″ N - 76° 16′ 34″ W; thence 156° (M) to Red Flasher #18; thence 011° (M) to Red Flasher #2; thence 302° (M) back to Green Marker #3.

(3) That area bounded by a line beginning on Long Point 34° 56′ 52″ N - 76° 16′ 42″ W; thence running 105° (M) to Red Marker #18; thence running 220° (M) to Green Marker #19; thence following the six foot contour past the Wreck Beacon to a point at 34° 53′ 45″ N - 76° 18′ 11″ W; thence 227° (M) to Red Marker #26; thence 229° (M) to Green Marker #27; thence 271° (M) to Red Flasher #28; thence 225° (M) to Green Flasher #29; thence 256° (M) to Green Flasher #31; thence 221° (M) to Green Flasher #35; thence 216° (M) to Green Flasher #37; thence 291° (M) to Bells Point 34° 43′ 42″ N - 76° 29′ 59″ W; thence north following the shoreline of Core Sound across the mouth of Jarrett Bay, Oyster Creek, Fulcher Creek, Willis Creek, Nelson Bay, Styron Bay, East Thorofare Bay and Rumley Bay, back to Long Point.

(g) In Pamlico Sound, it is unlawful to set a pound net, pound net stakes, or any other related equipment without radar reflective metallic material and yellow light reflective tape or devices on each end of the pound net set. The radar reflective material and the light reflective tape or devices must be affixed to a stake of at least three inches in diameter, must cover a vertical distance of not less than 12 inches, and must be detectable by radar and light from a vessel when approached from all directions. Light reflective tape or devices may be affixed to the radar reflective material.

(h) Escape Panels:

(1) The Fisheries Director may, by proclamation, require escape panels in pound nets and may impose any or all of the following restrictions on the use of escape panels:

(A)~~(1)~~ Specify size, number, and location.

(B)~~(2)~~ Specify mesh length, but not more than six inches.

(C)~~(3)~~ Specify time or season.

(D)~~(4)~~ Specify areas.

(2) It is unlawful to use flounder pound nets without four unobstructed escape panels in each pound. The escape panels must be fastened to the bottom and corner ropes on each wall on the side and back of the pound opposite the heart. The escape panels must be a minimum mesh size of five and one-half inches, hung on the diamond, and must be at least six meshes high and eight meshes long.

Authority G.S. 113-134; 113-152; 113-182; 113-221; 143B-289.53.

.0109 LONG HAUL/SWIPE NET FISHING OPERATIONS

It is unlawful to tow or pull a net in a long-haul or swipe net fishing operation:

(1) Without a floating buoy attached a minimum of every 100 yards along the cork line. The buoy shall be international orange and shall be no less than five inches in diameter and no less than 11 inches in length; and

(2) Without a flag, square in shape, international orange in color, at least 24 inches by 24 inches in size, flying in the rigging so as to be visible when approaching the vessel from any direction.

(3) South and west of a line beginning on the west shore of Pamlico Sound at Bluff Point 35° 19' 32" N - 76° 09' 20" W; thence running 129° (M) to a point on shore on Ocracoke Island at 35° 08' 00" N - 75° 55' 00" W, without escape panels as follows:

(a) For long haul operations, two panels four feet deep and six feet long must be installed in the bailing end of the bunt net.

(b) For swipe net operations, two panels three feet deep and five feet long must be installed in the bailing end of the bunt net.

(c) One panel shall be installed within 12 inches of the float line and the other panel shall be installed within 12 inches of the lead (bottom) line.

(d) The panels shall be constructed of unobstructed trawl rings with an inside diameter no less than one and nine-sixteenth inches (1 9/16"). The rings shall be fastened together at a maximum of four points per ring.

Authority G.S. 113-134; 113-182; 143B-289.4.

SUBCHAPTER 3M - FINFISH

SECTION .0500 - OTHER FINFISH

.0503 FLOUNDER

(a) It is unlawful to possess flounder:

(1) Less than 13 inches total length taken from internal waters:

(2) Less than 14 inches total length taken from the Atlantic Ocean with commercial fishing equipment or by hook-and-line or gig if claiming the exemption specified in Paragraph (f) of this Rule;

(3) Less than 15 ~~14½~~ inches total length taken from the Atlantic Ocean by hook-and-line or gig.

(b) From ~~Between~~ October 1 through ~~and~~ April 30, it shall be unlawful to use a trawl in the Atlantic Ocean within three miles of the ocean beach from the North Carolina/Virginia state line (35° 33′ N) to Cape Lookout (34° 36′ N) unless each trawl has a ~~cod end (tailbag)~~ mesh length of ~~greater than~~ 5 ½ inches or larger diamond mesh (stretched) or 6 inches or larger square mesh (stretched) applied throughout the body, extension(s) and the cod end (tailbag) of the net ~~cod end for at least 75 continuous meshes forward of the terminus (end) of the net, or the terminal one-third portion of a net, measured from the terminus of the cod end to the head rope for cod ends with less than 75 meshes,~~ except as provided in Paragraphs (h) and (i) of this Rule.

(c) License to Land Flounder from the Atlantic Ocean:

(1) It is unlawful to land more than 100 pounds per trip of flounder taken from the Atlantic Ocean unless the vessel has been issued a License to Land Flounder from the Atlantic Ocean.

(2) It is unlawful for a fish dealer to purchase or offload more than 100 pounds of flounder taken from the Atlantic Ocean by a vessel that has not first procured a valid North Carolina License to Land Flounder from the Atlantic Ocean.

(3) To qualify for a North Carolina License to Land Flounder from the Atlantic Ocean, a vessel shall have:

(A) been licensed under G.S. 113-152 or 113-153 during any two of the 1992-93, 1993-94, or 1994-95 license years, and

(B) landed in North Carolina at least 1,000 pounds of flounder each year from the Atlantic Ocean during any two of the 1992-93, 1993-94, or 1994-95 license years for which the vessel was licensed to land in North Carolina.

(4) At least 10 days prior to issuance, applicants for the license shall complete an application form provided by the Division of Marine Fisheries and submit it to the North Carolina Division of Marine Fisheries, Post Office Box 769, 3441 Arendell Street, Morehead City, North Carolina 28557. The following information is required:

(A) Valid documentation papers or current motor boat registration or copy thereof;

(B) Proof of required licenses and flounder landings data for that vessel during the years the vessel was licensed.

Licenses shall be issued to qualifying vessels at no fee and only from the Morehead City Office of the Division of Marine Fisheries.

(5) Licenses may only be transferred:

(A) with the transfer of the ownership of a vessel holding a License to Land Flounder from the Atlantic Ocean to the new owner of that vessel; ~~vessel,~~ or

(B) by the owner of a vessel to another vessel under the same ownership. The vessel owner is only eligible for the same number of Licenses to Land Flounder from the Atlantic Ocean for which his boats qualify; ~~qualify.~~

(C) any transfer of license under this Paragraph must be facilitated through the Division of Marine Fisheries Morehead City Office only.

(6) It is unlawful for any individual to land flounder from the Atlantic Ocean without having ready at hand for inspection a valid License to Land Flounder from the Atlantic Ocean, except as specified in Subparagraph (c)(1) of this Rule.

(7) Suspension or Revocation:

(A) A License to Land Flounder from the Atlantic Ocean issued under this Rule shall be subject to suspension or revocation pursuant to the provisions of 15A NCAC 3P, except that this license shall be subject to revocation pursuant to the provisions of G.S. 113-166 when the licensee is convicted of a criminal offense within the jurisdiction of the Department under the provisions of Subchapter IV of G.S. 113, or of the rules of the Marine Fisheries Commission adopted under the authority of that Subchapter.

(B) The Division may commence proceedings under 15A NCAC 3P, for suspension or revocation of a License to Land Flounder from the Atlantic Ocean if it finds:

(i) the license was obtained by providing any false information or willfully omitting required information when the information is material to the securing of the license; or

(ii) the license was falsified, fraudulently altered, or counterfeited; or

(iii) the licensee practices any fraud or deception designed to evade the provisions of this Rule or reasonable administrative directives made under the authority of this Rule or G.S. 113-182(b)(3).

(d) It is unlawful to transfer flounder taken from the Atlantic Ocean from one vessel to another.

(e) It is unlawful to possess more than eight ~~10~~ flounder per person per day taken by hook-and-line or gig from the Atlantic Ocean.

(f) Persons fishing from a vessel with a valid vessel endorsement to sell or persons fishing but not from a vessel who hold a valid nonvessel endorsement to sell are exempt from the possession limit in Paragraphs (a)(3) and (e) of this Rule.

(g) Tailbag liners of any mesh size, the multiple use of two or more cod ends, or other netting material that in any way could restrict the legal size mesh required by this Rule, shall not be used or possessed on the deck of a vessel in the Atlantic Ocean from ~~between~~ October 1 through ~~and~~ April 30 from the North Carolina/Virginia state line (36° 33′ N) to Cape Lookout (34° 36′ N).

(h) Trawls with a cod end mesh size smaller than described in Paragraph (b) of this Rule may be used or possessed on the deck of a vessel provided not more than 100 pounds of flounder per trip from May 1 through October 31 or more than 200 pounds from November 1 through April 30 is possessed aboard or landed from that vessel.

(i) Flynets are exempt from the flounder trawl mesh requirements if they meet the following definition:

(1) The net has large mesh in the wings that measure 8 inches to 64 inches;

(2) The first body section (belly) of the net has 35 or more meshes that are at least 8 inches; and

(3) The mesh decreases in size throughout the body of the net to as small as 2 inches or smaller towards the terminus of the net.

(j) Commercial Season.

(1) The North Carolina season for landing ocean-caught flounder shall open January 1 each year. If 70 percent of the quota allocated to North Carolina in accordance with the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission ~~Mid-Atlantic Fisheries Management Council-Atlantic States Marine Fisheries Commission~~ Fishery Management Plan for Summer Flounder is projected to be taken, the Fisheries Director shall, by proclamation, close North Carolina ports to landing of flounder taken from the ocean.

(2) The season for landing flounder taken in the Atlantic Ocean shall reopen November 1 if any of the quota allocated to North Carolina in accordance with the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission ~~Mid-Atlantic Fisheries Management Council-Atlantic States Marine Fisheries Commission~~ Fishery Management Plan for Summer Flounder remains. If after reopening, 100 percent of the quota allocated to North Carolina in accordance with the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission ~~Mid-Atlantic Fisheries Management Council-Atlantic States Marine Fisheries Commission~~ Fishery Management Plan for Summer Flounder is projected to be taken prior to the end of the calendar year, the Fisheries Director shall, by proclamation, close North Carolina ports to landing of flounder taken from the ocean.

(3) During any closed season prior to November 1, vessels may land up to 100 pounds of flounder per trip taken from the Atlantic Ocean.

(k) The Fisheries Director may, by proclamation, establish trip limits for the taking of flounder from the Atlantic Ocean to assure that the individual state quota allocated to North Carolina in the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission ~~Mid-Atlantic Fisheries Management Council-Atlantic States Marine Fisheries Commission~~ Fishery Management Plan for Summer Flounder is not exceeded.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

.0507 RECREATIONAL FISHING RESTRICTIONS

(a) Blue marlin:

(1) It is unlawful to possess blue marlin less than 96 ~~86~~ inches in length from the lower jaw to the fork in the tail.

(2) It is unlawful to possess more than one blue marlin per person per day.

(b) White marlin:

(1) It is unlawful to possess white marlin less than 66 ~~62~~ inches in length from the lower jaw to the fork in the tail.

(2) It is unlawful to possess more than one white marlin per person per day.

(c) Sailfish:

(1) It is unlawful to possess sailfish less than 57 inches in length from the lower jaw to the fork in the tail.

(2) It is unlawful to possess more than one sailfish per person per day.

(d) Cobia:

(1) It is unlawful to possess cobia less than 33 inches fork length taken by hook-and-line.

(2) It is unlawful to possess more than two cobia per person per day taken by hook-and-line.

~~(e) Dolphin:~~

~~(1) It is unlawful to possess more than 10 dolphin per person per day.~~

~~(2) Exemptions:~~

~~(A) Charter vessels with a valid National Marine Fisheries Service Charter Vessel Coastal Migratory Pelagic Permit and licensed by the U.S. Coast Guard to carry six or less passengers for hire, may possess a maximum of 60 dolphin per day regardless of the number of people on board.~~

~~(B) Vessels with a valid commercial National Marine Fisheries Service Federal Coastal Migratory Pelagic Permit including charterboats when fishing with three or less persons (including captain and mate) on board are exempt from the creel limits set out in Subparagraph (e)(1) of this Rule.~~

Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

.0515 DOLPHIN

It is unlawful to possess more than 10 dolphin (*Coryphaena*

hippurus) per person per day.

(1) Exemptions:

(a) Charter vessels with a valid National Marine Fisheries Service Charter Vessel Coastal Migratory Pelagic Permit and licensed by the U.S. Coast Guard to carry six or less passengers for hire, may possess a maximum of 60 dolphin per day regardless of the number of people on board.

(b) Vessels with a valid commercial National Marine Fisheries Service Federal Coastal Migratory Pelagic Permit including charterboats (when fishing with three or less persons including captain and mate on board) are exempt from the creel limits set out in this Paragraph of this Rule, except it is unlawful to possess or land more than 4,000 pounds of dolphin per vessel per trip.

(2) Quota. The annual (January through December) commercial quota for dolphin landed in North Carolina is 360,000 pounds. If 200,000 pounds of the quota is projected to be taken, the Fisheries Director shall, by proclamation, reduce the trip limit in SubItem (1)(b) of this Rule to 750 pounds. If the quota is projected to be taken the Fisheries Director shall, by proclamation, close North Carolina ports to the commercial landing of dolphin.

(3) It is unlawful to transfer dolphin from one vessel to another.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.5.

SUBCHAPTER 3O - LICENSES, LEASES, AND FRANCHISES

SECTION .0300 - LICENSE APPEAL PROCEDURES

.0303 APPEAL PETITION AND OTHER EVIDENCE

(a) Under the Statutes authorizing issuance of special licenses in cases of emergencies or hardships, the most important criterion is the demonstration of emergency or hardship. The Appeals Panel must and shall deny petitions which fail to demonstrate emergency or hardship consistent with the provisions of 15A NCAC 3O .0305 and .0306.

(b) The contents of an appeal petition are as follows:

(1) Petitions that do not contain the following items shall be returned to the petitioner without being processed:

(A) A completed Appeals License Application;

(B) A statement of the license(s) being requested;

(C) Where a vessel license is requested, a copy of the registration/documentation information which identifies the vessel;

(D) The petitioner's notarized signature; and

(E) Where petitioners are not residents of North Carolina, certification from the fisheries agency of their resident state or jurisdiction showing, for the time period beginning July 1, 1991 to the present, all licenses held and any violations or convictions entered against them, or the lack thereof.

(2) In addition, a petition shall include:

(A) A statement of emergency or hardship consistent with the standards in this Section;

(B) A list of license suspensions and revocations, and convictions of fisheries offenses in any state or jurisdiction during the past three years;

(C) The reason(s) for failure to obtain the license(s) before July 1, ~~1994;~~ 1994, and in the case of vessel endorsements to sell, between 1994 and August 15, 1997;

(D) A list of commercial fishing license(s), from any state or jurisdiction, held by the petitioner since July 1, 1991, with identifying license number and issuing agency; and

(E) Request for oral argument, if desired.

(3) A petition may be accompanied by:

(A) Evidence demonstrating the extent to which the petitioner relies on commercial fishing as a livelihood, such as tax records, sales records, trip tickets, and similar information;

(B) Sworn affidavits by others verifying or supporting the information in the petition;

(C) Exhibits and any other evidence to be offered in support of the appeal; and

(D) A statement waiving the opportunity to reply to the Division of Marine Fisheries recommendation.

(c) Requests for oral arguments may only be made in the appeal petition.

(d) Petitions, evidence, and supporting information may only be filed with the Division of Marine Fisheries at its offices in Morehead City or by mailing to Post Office Box 769, Morehead City, North Carolina 28557-0769. The petition shall not be processed until the petitioner provides an original and four copies of the petition and supporting information.

(e) The Division of Marine Fisheries shall submit its recommendation and any other relevant information on each appeal to the Appeals Panel within 10 working days of the receipt of a complete petition. On the same day the recommendation is sent to the Appeals Panel, the Division of Marine Fisheries shall serve a copy of its recommendation on the petitioner by depositing it in first class mail, hand delivery, or facsimile delivery.

(f) Any reply to the Division of Marine Fisheries recommendation must be filed with the Division of Marine Fisheries within 10 days after the recommendation is served. The petition shall not be processed until the petitioner provides an original and four copies of the reply and supporting information.

Authority G.S. 113-134; 113-153.1; 1993, c. 576, s. 3; 143B-289.4 (Regular Session 1994).

.0306 HARDSHIP LICENSES

The following criteria will be applied in approving or denying petitions based on hardship:

(1) A petition will be denied unless it demonstrates at least one of the following circumstances:

(a) For each license applied for, the petitioner has held that license or an equivalent commercial fishing license from North Carolina or from another state or jurisdiction in two out of the ~~past~~ three ~~years:~~ years prior to the moratorium applicable to that license; and petitioner can demonstrate extenuating or extraordinary circumstances which prevented him or her from obtaining the North Carolina commercial fishing license for ~~1993-1994;~~ 1993-1994 or, in the case of the vessel endorsement to sell, for any of the years from 1994 through 1997;

(b) It can be demonstrated that petitioner did not obtain a 1993-1994 license because petitioner was on active military duty outside the state and that for two out of the three years previous to going on active military duty, petitioner held the license being applied for;

(c) The petitioner has become 16 years of age since June 30, 1994; has a history of commercial fishing with their parent or guardian; and holds a Shellfish or Crab License;

(d) A member of the petitioner's immediate family, who holds a current license, has died, is incapacitated, or is retiring from the commercial fishery; the petitioner needs the license to continue in that fishery operation; and the family member will surrender the license upon approval of the petition;

(e) The petitioner is applying for a commercial vessel license; does not have and has not applied for a vessel endorsement to sell fish; can demonstrate that the license is necessary to provide nutritional subsistence for petitioner's household which petitioner is otherwise unable to afford; and petitioner agrees to restrict possession of fish to recreational size and creel limits; or

(f)~~(e)~~ The petitioner can demonstrate facts similar in hardship to the preceding situations.

(2) Hardship and emergency licenses are issued solely to the petitioner based upon individual demonstration of need. A petition may be denied if the Appeals Panel finds that the petitioner is unable to demonstrate a substantial adverse effect on his or her livelihood in the event the license is denied.

(3) The petition shall be denied if, the petitioner has a history of fishing law violations which would cause petitioner to be ineligible for a license in North Carolina or has a history of substantial noncompliance with federal or state laws, regulations, or rules for the protection of marine and estuarine resources in any state or jurisdiction.

(4) The holder of a current and valid hardship license on June 30 of the license year has the same eligibility to renew the license as persons not subject to the moratorium.

Authority G.S. 113-134; 113-153.1; 1993, c. 576, s. 3;143B-289.4 (Regular Session 1994).

SUBCHAPTER 3P - HEARING PROCEDURES

SECTION .0100 - HEARING PROCEDURES

.0103 PETITIONS FOR REGULATORY ACTIVITY

~~(a) Any person(s) desiring to request the adoption, amendment, or repeal of a rule may make such request in a petition filed pursuant to G.S. 150B-20, addressed to the Marine Fisheries Commission, and mailed to the Division of Marine Fisheries. Such petitions shall contain the following information:~~

~~(1) A draft of the proposed rule or a summary of its intent.~~

~~(2) Reasons for adoption of the proposed rule(s) and effect on existing rules and practices.~~

~~(3) Name and address of the petitioner(s).~~

~~(b) Petitions will be placed on the agenda for the next regularly scheduled Marine Fisheries Commission meeting if received at least four weeks prior to the meeting. The Fisheries Director will prepare recommended responses to petitions for the Commission's consideration. Petitions will be considered in accordance with the requirements of G.S. 150B-20.~~

Authority G.S. 113-134; 143B-289.4; 150B-20.

SECTION .0200 - DECLARATORY RULINGS

.0201 DECLARATORY RULINGS: GENERALLY

At the request of any person aggrieved, as defined in G.S. 150B-2(6), the Marine Fisheries Commission may issue a declaratory ruling as provided in G.S. 150B-4.

Authority G.S. 113-134; 113-182; 143B-289.53; 150B-4.

.0202 PROCEDURE FOR REQUESTING DECLARATORY RULINGS

(a) All requests for a declaratory ruling shall be filed in writing with the Director of the Division of Marine Fisheries, Department of Environment and Natural Resources (DENR), PO Box 769, Morehead City, North Carolina 28557. All requests shall include the following: the aggrieved person's name and address; the rule, statute or order upon which a ruling is desired; a concise statement as to whether the request is for a ruling on the validity of a rule or on the applicability of a rule, order or statute to a given factual situation; arguments or data which demonstrate that the petitioner is aggrieved by the rule or statute or its potential application to him; a statement of the consequences of a failure to issue a declaratory ruling in favor of the petitioner; and a statement of whether an oral argument is desired, and, if so, the reasons for requesting such an oral argument.

(b) A request for a ruling on the applicability of a rule, order,

or statute must include an undisputed description of the factual situation on which the ruling is to be based. A request for a ruling on the validity of a Commission rule must state the aggrieved person's reasons for questioning the validity of the rule. A person may ask for both types of rulings in a single request. A request for a ruling must include or be accompanied by:

(1) a statement of the undisputed facts proposed for adoption by the Commission; and

(2) a draft of the proposed ruling.

(c) Before deciding the merits of the request, the Commission may:

(1) request additional written submissions from petitioner(s);

(2) request a written response from the Division staff or any other person; or

(3) hear oral argument from the petitioner(s) and Division staff.

(d) Unless the Division waives the opportunity to be heard, it shall be a party to any request for declaratory ruling. Upon written request, the requesting party and the Division may each be allowed to present oral arguments to the Commission at a regularly scheduled meeting. Neither party may offer testimony or conduct cross-examination before the Commission. The declaratory ruling shall be determined on the basis of the statement of undisputed facts submitted by the parties.

(e) Whenever the Commission believes "for good cause" that the issuance of a declaratory ruling is undesirable, the Commission may refuse to issue such ruling. The Commission shall notify in writing the person requesting the ruling, stating the reasons for the refusal to issue a ruling on the request.

(f) For purposes of Paragraph (e) of this Rule, the Commission shall ordinarily refuse to issue a ruling on a request for declaratory ruling on finding that:

(1) the petitioner(s) and the Division cannot agree on a set of undisputed facts sufficient to support a meaningful ruling;

(2) there has been a similar determination in a previous contested case or declaratory ruling;

(3) the matter is the subject of a pending contested case hearing or litigation in any North Carolina or federal court; or

(4) no genuine controversy exists as to the application of a statute or rule to the undisputed factual situation presented.

(g) The Commission shall keep a record of each declaratory ruling, which shall include at a minimum the following items:

(1) the request for a ruling;

(2) any written submissions by the parties;

(3) the statement of undisputed facts on which the ruling was based;

(4) any transcripts of oral proceedings, or, in the absence of a transcript, a summary of all arguments;

(5) any other matter considered by the Commission in making the decision; and

(6) the declaratory ruling, or the decision to refuse to issue a declaratory ruling, together with the reasons therefore.

(h) A declaratory ruling is binding on the Commission and the person requesting it unless it is altered or set aside by the court. The Commission may not retroactively change a declaratory ruling, but nothing in this Section prevents the Commission from prospectively changing a ruling.

(i) Unless the requesting party consents to the delay, failure of the Commission to issue a ruling on the merits or deny the request within 60 days of receipt of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.

Authority G.S. 113-134; 113-182; 143B-289.53; 150B-4.

.0203 DEFINITION

For purposes of Rule .0202 of this Subchapter, a declaratory ruling shall be deemed to be "in effect" until the statute or rule interpreted by the declaratory ruling is amended, altered or repealed; until the Commission changes the declaratory ruling prospectively for good reasons; or until any court sets aside the ruling in litigation between the Commission or Department of Environment and Natural Resources and the party requesting the rule; or until any court of the Appellate Division of the General Court of Justice shall construe the statute or rule which is the subject of the declaratory ruling in a manner plainly irreconcilable with the declaratory ruling.

Authority G.S. 113-134; 113-182; 143B-289.53; 150B-4.

SECTION .0300 - PETITIONS FOR RULEMAKING

.0301 FORM AND CONTENTS OF PETITION

(a) Any person wishing to request the adoption, amendment, or repeal of a rule of the Marine Fisheries Commission (hereinafter referred to as the Commission) shall make his request in a written petition addressed to the Chairman of the Marine Fisheries Commission and submitted to the Commission staff at:

Marine Fisheries Commission
Division of Marine Fisheries
PO Box 769
Morehead City, North Carolina 28557.

(b) The petition shall contain the following information:

(1) the text of the proposed rule(s);

(2) the statutory authority for the agency to promulgate the rule(s);

(3) a statement of the reasons for adoption of the proposed rule(s);

(4) a statement of the effect on existing rules;

(5) copies of any documents and data supporting the proposed rule(s);

(6) a statement of the effect of the proposed rule(s) on existing practices in the area involved, including an estimate of cost factors for persons affected by the proposed rule(s);

(7) a description of those most likely to be affected by the proposed rule(s); and

(8) the name(s) and address(es) of the petitioner(s).

(c) When petitions and supporting documents and data exceed

10 pages in length, 15 copies of the entire petition and any attachments shall be submitted.

(d) Petitions failing to contain the required information shall be returned by the Marine Fisheries Commission Chairman.

Authority G.S. 113-134; 113-182; 113-182.1; 113-201; 143B-289.51; 143B-289.52; 150B-20.

.0302 REVIEW BY A COMMITTEE OF THE COMMISSION

(a) The Marine Fisheries Commission Chairman may refer duly submitted petitions to the appropriate standing advisory committee(s) or other advisory committee(s) of the Commission for review and recommended action. Copies of petitions for rulemaking shall be distributed to the Commission members when referred to a committee of the Commission.

(b) The Chairman of the Committee assigned to review a submitted petition for rulemaking shall announce the date of a meeting to consider the petition within 10 days of the assignment of the petition.

(c) At least 15 days before the Committee meeting, the Committee Chairman shall send notice of the Committee meeting to the petitioner, members of the Commission, and persons who have requested notice of petitions for rulemaking.

(d) The petitioner shall be afforded the opportunity to present the petition for rulemaking to the Committee. The Director, through staff, may make a presentation to the Committee.

(e) Interested persons must request the opportunity to make a presentation to the Committee(s) through the Committee(s) chair(s). The request shall:

(1) state the interest of the person,

(2) the person's position on the petition for rulemaking, and

(3) be accompanied by supporting materials.

The Chairman of the Committee will determine whether additional interested persons make oral presentations before the Committee.

(f) The Chairman of the Committee will determine whether a public meeting should be conducted by the Committee before it makes a recommendation on the petition for rulemaking.

(g) During the Committee's review, members of the Commission, other than Committee members, who are present may participate as a member of the Committee in discussions of the petition but may not vote on the recommended action on the petition.

Authority G.S. 113-134; 113-182; 143B-289.52; 150B-20.

.0303 PRESENTATION TO THE COMMISSION

(a) Petitions for rulemaking, when deemed complete by the Marine Fisheries Commission Chairman, shall be presented to the Marine Fisheries Commission for its consideration and determination at the next regularly scheduled meeting of the Commission.

(b) Within 120 days following submission of the petition requesting rulemaking, the Marine Fisheries Commission shall:

(1) initiate rulemaking proceedings in accordance with G.S. 150B-20 and notify the person(s) who submitted the petition of the decision in writing; or

(2) deny the petition in writing, stating the reason or reasons for the denial, and send the written denial to the person(s) who submitted the petition.

Authority G.S. 113-134; 113-182; 143B-289.51; 150B-20.

.0304 RECOURSE TO DENIAL OF THE PETITION

If the Marine Fisheries Commission denies the petition for rulemaking, the petitioner(s) may seek judicial review of the denial under G.S. 150B, Article 4 of Chapter 150B of the General Statutes.

Authority G.S. 113-134; 113-182; 143B-289.51; 150B-20.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 11 - NORTH CAROLINA BOARD OF EMPLOYEE ASSISTANCE PROFESSIONALS

***Notice** is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Employee Assistance Professionals intends to adopt the rules cited as 21 NCAC 11 .0101-.0112. Notice of Rule-making Proceedings was published in the Register on April 1, 1998.*

Proposed Effective Date: *April 1, 1999*

Instructions on How to Demand a Public Hearing: *A demand for public hearing must be requested in writing within 15 days of this notice and addressed to Charlotte F. Hall, Division of MH/DD/SAS, 325 N. Salisbury Street, Albemarle Building, Raleigh, NC 27603-5906.*

Reason for Proposed Action: *1995 Session, Chapter 720, House Bill An Act to Create the North Carolina Board of Employee Assistance Professionals and to Provide for the Licensing of Employee Assistance Professionals.*

Comment Procedures: *Written comments should be submitted to Charlotte F. Hall, Rule-making Coordinator, Division of Mental Health Developmental Disabilities and Substance Abuse Services, 325 N. Salisbury Street, Albemarle Building, Raleigh, NC 27603-5906.*

Fiscal Note: *These Rules, 21 NCAC 11 .0101-.0112 affect the expenditure or distribution of State and local government funds. These Rules do not have a substantial economic impact of at least five million dollars ($5,000,000) in a 12-month period.*

SECTION .0100 - ADMINISTRATION

.0101 SCOPE

(a) This Subchapter sets forth rules for the North Carolina Board of Employee Assistance Professionals.

(b) The mailing address of the Board is POBox 10344, Raleigh, North Carolina 27605-0344.

Authority G.S. 90-509.

.0102 COMPOSITION OF BOARD MEMBERS

(a) Board members shall be appointed in accordance with G.S. 90-501 and may serve successive annual terms as either Chair or Secretary.

(b) A Chair and a Secretary shall be elected at the first meeting of each calendar year.

Authority G.S. 90-501; 90-511.

.0103 BOARD MEETINGS

(a) Board meetings shall be held quarterly.

(b) The Board Chair may call special meetings as necessary to conduct business.

(c) Board meetings shall be noticed in accordance with the Open Meetings Law set forth in G.S. 143-318.12 Public Notice of Official Meetings.

Authority G.S. 90-501 143-318.12.

.0104 LICENSE APPLICATION

(a) The Board shall prescribe the forms to be used for submitting an application for initial or renewal licensure.

(b) An application shall not be considered complete unless it is submitted using the prescribed form and the unless the Board has received the application fee.

(c) Specific information contained in both the initial and renewal applications shall be deemed confidential as prescribed by the Board.

(d) Both an initial and renewal license are valid for a period of three years.

Authority G.S. 90-503.

.0105 TRANSCRIPTS AND OTHER SUPPORTING DOCUMENTS

(a) Official educational transcripts submitted to support an application for licensure shall be received by the Board directly from the educational institution.

(b) Transcript course titles which are ambiguous and do not convey the content of courses shall require an applicant to provide other documents and information to support claimed educational credentials. Such documents may be official catalog descriptions, course syllabi, reading lists, term papers, theses and written research.

(c) A current copy of an applicant's certification by the Employee Assistance Certification Commission, as an employee assistance professional, shall be submitted with the application.

Authority G.S. 90-503.

.0106 REVIEW OF APPLICATIONS

(a) The Board shall review each completed initial application for licensure and issue a license to an applicant who meets the requirements for licensure.

(b) The Board shall review each completed application for renewal of licensure and issue a renewal license to an applicant who meets the requirements for renewal.

(c) Upon application for an initial or renewal license, the Board shall ensure that each applicant agrees, in writing, to comply with the Employee Assistance Certification Commission Code of Professional Conduct and the Employee Assistance Professional Association Code of Ethics.

Authority G.S. 90-505.

.0107 NOTICE OF DENIAL OF INITIAL OR RENEWAL APPLICATION

(a) The Board shall notify each applicant, in writing, of the reason for which an application for initial licensure or renewal of licensure was denied.

(b) The applicant shall have the right to file a petition for a contested case hearing in accordance with G.S. 150B, Article 3.

Authority G.S. 90-505; 150B, Article 3.

.0108 DISCIPLINARY ACTION/HEARING

(a) The Board shall impose reasonable discipline for conduct it finds in violation of G.S. 90-509, only after conducting a hearing in accordance with G.S. 150B, Article 3.

(b) Board disciplinary action may include:

(1) admonishment: a serious warning for mild misconduct;

(2) reprimand: a public rebuke and sanction for misconduct, which may require follow-up actions by the licensee;

(3) suspension: withdrawal of the privilege of using the title of Licensed Employee Assistance Professional during the time frame specified by the Board; and

(4) revocation: permanent withdrawal of the privilege of using the title of Licensed Employee Assistance Professional. A Licensed Employee Assistance Professional whose license is revoked by the Board must surrender the license certificate to the Board.

(c) Any disciplinary action may be suspended for a reasonable period not to exceed one year upon such terms and conditions as the Board deems appropriate, if in the sole discretion of the Board, it is in the best public interest to do so.

(d) The Board deems disciplinary action to be those terms stated.

(e) Notification of final disciplinary action shall be made to the Employee Assistance Professionals Association and the Employee Assistance Certification Commission, within 30 days of the final action taken by the Board.

Authority G.S. 90-506; 150B, Article 3.

.0109 CURRICULA AND MINIMUM STANDARDS FOR TRAINING

The Board shall adopt and incorporate by reference the minimum continuing education requirements of the Employee Assistance Certification Commission. This referenced material shall include any subsequent editions and amendments. It may be obtained from the EACC/Certification Department/EAPA, 2101 Wilson Blvd., Suite 500, Arlington, Virginia 22201-3022. Cost of the documents vary.

Authority G.S. 90-500.

.0110 ETHICAL STANDARDS

(a) The Board shall adopt and incorporate by reference the Code of Professional Conduct for Certified Employee Assistance Professionals, Fourth Edition. This referenced material shall include any editions and amendments promulgated by the Employee Assistance Certification Commission.

(b) The Board shall also adopt and incorporates by reference the Employee Assistance Professionals Association Code of Ethics. This referenced material shall include any subsequent editions and amendments. It may be obtained at no cost from the EACC/Certification Department/EAPA, 2101 Wilson Blvd., Suite 500, Arlington, Virginia 22201-3022.

Authority G.S. 90-500.

.0111 FEES

(a) Upon submission of an application for initial licensure, a fee of one hundred dollars ($100.00) shall be paid to the Board.

(b) A fee of seventy-five dollars ($75.00) shall be paid to the Board for renewal of license.

(c) Neither an initial or a renewal application shall be considered complete until the required fee is paid.

Authority G.S. 90-503.

.0112 PENALTIES

In accordance with G.S. 90-506 and 90-509, when requested, the Board shall review its assessment of a civil penalty against an individual in a contested case hearing as set forth in G.S. 150B, Article 3.

Authority G.S. 90-506; 90-509; 150B, Article 3.

The Codifier of Rules has entered the following temporary rule(s) in the North Carolina Administrative Code. Pursuant to G.S. 150B-21.1(e), publication of a temporary rule in the North Carolina Register serves as a notice of rule-making proceedings unless this notice has been previously published by the agency.

TITLE 10 - DEPARTMENT OF HEALTH AND HUMAN SERVICES

Rule-making Agency: *DHHS - Division of Medical Assistance*

Rule Citation: *10 NCAC 26H .0304*

Effective Date: *August 7, 1998*

Findings Reviewed by Julian Mann: *Approved*

Authority for the rule-making: *G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. Part 447, Subpart C*

Reason for Proposed Action: *The Division of Facility Services has cited many ICF-MR facilities as needing fire sprinkler systems. In addition, providers recognize the need for installation of said systems.*

Comment Procedures: *Written comments concerning this rule-making action must be submitted to Portia W. Rochelle, Rule-Making Coordinator, Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603.*

CHAPTER 26 - MEDICAL ASSISTANCE

SUBCHAPTER 26H - REIMBURSEMENT PLANS

SECTION .0300 - IFC-MR PROSPECTIVE RATE PLAN

.0304 RATE SETTING METHOD FOR NON-STATE FACILITIES

(a) A prospective rate shall be determined annually for each non-state facility to be effective for dates of service for a 12 month rate period beginning each July 1. The prospective rate shall be paid to the provider for every Medicaid eligible day during the applicable rate year. The prospective rate may be determined after the effective date and paid retroactively to that date. The prospective rate may be changed due to a rate appeal under Rule .0308 of this State Plan or facility reclassification under Paragraph (b) of this Rule. Each non-state facility, except those facilities where Paragraph (v) of this Rule applies, shall be classified into one of the following groups:

(1) Group 1- Facilities with 32 beds or less.

(2) Group 2- Facilities with more than 32 beds.

(3) Group 3- Facilities with medically fragile clients. For rate reimbursement purposes under this Rule medically fragile clients are defined as any individual with complex medical problems who have chronic debilitating diseases or conditions of one or more physiological or organ systems which generally make them dependent upon 24-hour a day medical/nursing/health supervision or intervention.

(4) Facilities in group 1 or 2 in Subparagraph (a)(1) or (2) of this Rule shall be further classified in accordance to the level of disability of the facility's clients, as measured by the Developmental Disabilities Profile (DDP) assessment instrument which along with the scoring instrument are hereby incorporated by reference, including subsequent amendments and editions. This material is available for inspection and copies may be obtained from the Division of Medical Assistance, 1985 Umstead Drive, Raleigh, North Carolina 27603 at a cost of twenty cents ($.20) per page. A summary of the levels of disability is shown in the following chart:

FACILITY DDP SCORE

Level	Low	High
1	200.00	300.00
2	125.00	199.99
3	100.00	124.99
4	75.00	99.99
5	50.00	74.99

(b) Facilities shall be reclassified into appropriate groups as defined in Paragraph (a) of this Rule.

(1) When a facility is reclassified, the rate shall be adjusted retroactively back to the date of the event that caused the reclassification. This adjustment shall give full consideration to any reclassification based on the change in facts or circumstances during the year. Overpayments related to this retroactive rate adjustment shall be repaid to the Medicaid program. Underpayments related to this retroactive rate adjustment shall be paid to the provider.

(2) The provider shall be given the opportunity to appeal the merits of the reclassification of any facility, prior to any decision by the Division of Medical

Assistance.

(3) The provider shall be notified in writing 30 days before the implementation of new rates resulting from the reclassification of any facility.

(4) The providers and the Division of Medical Assistance shall make every reasonable effort to ensure that each facility is properly classified for rate setting purposes.

(5) A provider shall file any request for facility reclassification in writing with the Division of Medical Assistance no later than 60 days subsequent to the proposed reclassification effective date.

(6) For facilities certified prior to July 1, 1993, the facility DDP score calculated for fiscal year 1993 shall be used to establish proper classification at July 1, 1995.

(7) For facilities certified after June 30, 1993, the most recent facility DDP score shall be used to establish proper classification.

(8) A facility reclassification review shall use the most current facility DDP score.

(9) A facility's DDP score shall be subject to independent validation by the Division of Medical Assistance.

(10) A new facility that has not had a DDP survey conducted on its clients shall be categorized as a level 2 facility for rate setting purposes, pending completion of the DDP survey. Upon completion of the DDP survey, the facility shall be subject to reclassification and rates shall be adjusted retroactively back to the date of certification. Overpayments related to this retroactive adjustment shall be paid to the Medicaid program. Underpayments related to this retroactive rate adjustment shall be paid to the provider.

(c) Facility rates under this Rule shall be established at July 1, 1995, under the following:

(1) For facilities certified prior to July 1, 1993, rates shall be derived from the 1993 cost reports.

(2) For facilities certified during fiscal year 1993-1994, the fiscal year 1994 facility specific cost report shall be used to derive rates.

(3) For facilities certified during fiscal year 1994-1995, the fiscal year 1995 facility specific cost report shall be used to derive rates.

(A) Rates for these facilities shall not be adjusted, except for the impact of inflation under Paragraph (k) of this Rule, until the fiscal year 1995 cost report has been properly reviewed. Rates for these facilities shall be adjusted retroactively back to July 1, 1995, once the fiscal year 1995 facility specific cost report has been properly reviewed. Overpayments related to this retroactive rate adjustment shall be repaid to the Medicaid program. Underpayments related to this retroactive rate adjustment shall be paid to the provider.

(4) Facilities with rates established during a rate appeal proceeding with the Division of Medical Assistance during fiscal years 1994 or 1995 shall not have their rates established in accordance with Subparagraph (c)(1), (c)(2), or (c)(3) of this Rule.

(A) The rates for these facilities shall remain at the level approved in the rate appeal proceeding adjusted only for inflation, as reflected in Paragraph (k) of this Rule.

(d) For facilities certified after June 30, 1993, rates developed from filed cost reports for fiscal years subsequent to 1993 may be retroactively adjusted if there is found to exist more than a two percent difference between the filed per diem cost and either the desk audited or field audited per diem cost for the same reporting period. Rates developed from desk audited cost reports may be retroactively adjusted if there is found to exist more than a two percent difference between the desk audited per diem cost and the field audited per diem cost for the same reporting period. The rate adjustment may be made after written notification to the provider 30 days prior to implementation of the rate adjustment.

(e) Each prospective rate developed in accordance with Subparagraph (c)(1), (c)(2), or (c)(3) of this Rule consists of the sum of two components as follows:

(1) Indirect care rate.

(2) Direct care rate.

(f) A uniform industry wide indirect care rate shall be established for each facility category shown under Subparagraph (a)(1), (a)(2), or (a)(3) of this Rule.

(1) The indirect rate for group 1 facilities is based on the fiftieth percentile of the following costs incurred by all group 1 facilities with six beds or less, except those related by common ownership or control to more than 40 said facilities:

(A) The sum of the cost of property ownership and use, administrative and general, and operation and maintenance of plant, as determined by the Myers and Stauffer study performed on the 1993 base year cost reports.

(2) The indirect rate for group 2 facilities is based on the fiftieth percentile of the costs noted in Part (f)(1)(A) of this Rule incurred by the group 2 facilities, as determined by the Myers and Stauffer study performed on the 1993 base year cost reports.

(3) The indirect rate for group 3 facilities is based on the fiftieth percentile of the costs noted in Part (f)(1)(A) of this Rule incurred by the group 3 facilities, as determined by the Myers and Stauffer study performed on the 1993 base year cost reports.

(4) The indirect rates established under Subparagraphs (f)(1), (f)(2), and (f)(3) of this Rule shall be reduced as determined based on industry cost analysis by an amount not to exceed four percent to account for expected operating efficiencies.

(g) The direct care rate for facilities certified prior to July 1, 1993, shall be based on the Myers and Stauffer study performed on the 1993 base year cost reports.

(1) The direct care rate for all facilities certified during fiscal years subsequent to fiscal year 1993 is based on the first facility specific cost report filed after certification. Based on said cost report, the direct care

rate is equal to the sum of all allowable costs reflected in the ICF-MR cost report cost centers, as included in the ICF-MR cost report format effective July 1, 1993, except for the following indirect cost centers:

(A) Property Ownership and Use

(B) Operation and Maintenance of Plant and Housekeeping-Non-Labor

(C) Administrative and General

(2) The direct care rate shall be limited to the lesser of the actual amount incurred in the base year or the cost limit derived from the fiftieth percentile of direct care costs incurred by the related facility group in the fiscal year 1993 base year, based on the Myers and Stauffer study.

(3) The fiftieth percentile cost limit shall be reduced by one percent each year, for the four year period beginning July 1, 1996, in order to account for expected operating efficiencies, as determined based on industry cost analysis.

(4) The fiftieth percentile cost limit shall be increased each year by price level changes calculated in accordance with Paragraph (k) of this Rule.

(h) The indirect rate shall not be subject to cost settlement.

(1) Costs above the indirect rate shall not be paid to the provider.

(2) Costs savings below the indirect rate shall not be recouped from the provider.

(i) The direct care rate shall be subject to cost settlement, based on the cost report, subject to audit, filed with the Division of Medical Assistance.

(1) Costs above the direct rate shall not be paid to the provider.

(2) Cost savings below the direct rate shall be recouped from the provider.

(j) Facilities with rates established during a rate appeal proceeding with the Division of Medical Assistance during fiscal years 1994 or 1995 may choose to cost settle under the provisions of Paragraphs (h) and (i) of this Rule, or under the following procedure:

(1) If, during a cost reporting period, total allowable costs are less than total prospective payments, then a provider may retain one-half of said difference, up to an amount of five dollars ($5.00) per patient day. The balance of unexpended payments shall be refunded to the Division of Medical Assistance. Costs in excess of a facility's total prospective payment rate are not reimbursable.

(2) The facilities subject to the Paragraph shall make the election on cost settlement methodology on or before the filing of the annual cost report with the Division of Medical Assistance.

(3) An election to follow the cost settlement procedures of Paragraphs (h) and (i) of this Rule shall be irrevocable.

(4) Rates established for these facilities during future rate appeal proceedings shall be subject to the cost settlement procedures of Paragraphs (h) and (i) of this Rule.

(k) To compute each facility's current prospective rate, the direct and indirect rates established by Paragraphs (f) and (g) of this Rule shall be adjusted for price level changes since the base year. No inflation factor for any provider shall exceed the maximum amount permitted for that provider by federal or state law and regulations.

(1) Price level adjustment factors are computed using aggregate costs in the following manners:

(A) Costs shall be separated into three groups:

(i) Labor,

(ii) Non-labor,

(iii) Fixed.

(B) The relative weight of each cost group is calculated to the second decimal point by dividing the total costs of each group (labor, nonlabor, and fixed) by the total cost of the three categories.

(C) Price level adjustment factors for each cost group shall be established as follows:

(i) Labor. The percentage change for labor costs is based on the projected average hourly wage of North Carolina service workers. Salaries for all personnel shall be limited to levels of comparable positions in state owned facilities or levels specified by the Division of Medical Assistance.

(ii) Nonlabor. The percentage change for nonlabor costs is based on the projected annual change in the implicit price deflator for the Gross National Product as provided by the North Carolina Office of State Budget and Management.

(iii) Fixed. No price level adjustment shall be made for this category.

(D) The weights computed in Part (k)(1)(B) of this Rule shall be multiplied by the rates computed in Part (k)(1)(C) of this Rule. These weighted rates shall be added to obtain the composite inflation rate to be applied to both the direct and indirect rates.

(l) Effective July 1, 1995, any rate reductions resulting from this State Plan shall be implemented based on the following deferral methodology:

(1) Rates shall be reduced for the excess of current rates over base year costs plus inflation.

(2) Rates shall be reduced a maximum of 50 percent of the fiscal 1996 inflation rate for the excess of actual costs over applicable cost limits. This reduction shall result in the facility receiving at a minimum 50 percent of the 1996 inflation rate. Any excess reduction shall be carried forward to future years.

(3) Total reduction in future years related to the excess reduction carried forward from Subparagraph (l)(2) of this Rule, shall not exceed the annual rate of inflation. This reduction shall result in the facility receiving at a minimum the rate established in Paragraph (l)(2) of

this Rule. Any excess reduction shall be carried forward to future years, until the established rate equals that generated by Paragraphs (f), (g), and (k) of this Rule.

(4) Rates calculated based on Subparagraphs (l)(2) and (3) of this Rule shall be cost settled based on the provisions of Subparagraph (j)(1) of this Rule until the fiscal year that the facility receives full price level increase under Paragraph (k) of this Rule.

(A) A provider may make an irrevocable election to cost settle under the provisions of Paragraphs (h) and (i) of this Rule during the deferral period.

(B) Once the rates calculated based on Subparagraphs (l)(2) and (3) of this Rule reach the fiscal year that the facility receives the full price level increase under Paragraph (k) of this Rule, then said fiscal year's rates shall be cost settled based on Paragraphs (h) and (i) of this Rule.

(C) Chain providers are allowed to file combined cost reports, for cost settlement purposes, for facilities that use the same cost settlement methodology and have the same uniform rate.

(D) A provider may request from the Division of Medical Assistance permission to continue cost settlement under Subparagraph (j)(1) of this Rule after the deferral period expires. Said request shall be made each year, 30 days prior to the cost report due date.

(m) The initial rate for facilities that have been awarded a Certificate of Need is established at the lower of the fair and reasonable costs in the provider's budget, as determined by the Division of Medical Assistance, or the projected costs in the provider's Certificate of Need application, adjusted from the projected opening date in the Certificate of Need application to the current rate period in which the facility is certified based on the price level change methodology set forth in Paragraph (k) of this Rule, or the rate currently paid to the owning provider, if the provider currently has an approved chain rate for facilities in the related facility category. The rate may be rebased to the actual cost incurred in the first full year of normal operations in the year an audit of the first year of normal operation is completed.

(1) In the event of a change in ownership, the new owner receives no more than the rate of payment assigned to the previous owner.

(2) Except in cases wherein the provider has failed to file supporting information as requested by the Division of Medical Assistance, initial rates shall be granted to new enrolled facilities no later than 60 days from the provider's filing of properly prepared budgets and supporting information.

(3) The initial rate for a new facility shall be applicable to all dates of service commencing with the date the facility is certified by the Medicaid Program.

(4) The initial rate for a new facility shall not be entered into the Medicaid payment system until the facility is properly enrolled in the Medicaid program and a Medicaid identification number has been assigned to the facility by the Division of Medical Assistance.

(n) A provider with more than one facility may be allowed to recover costs through a combined uniform rate for all facilities.

(1) Combined uniform rates for chain providers shall be approved upon written request from the provider and after review by the Division of Medical Assistance.

(2) In determining a combined uniform rate for a particular facility group, the weighted average of each facility's rate, calculated in accordance to all other provisions of this Rule, shall be used.

(3) A chain provider with facility(s) that fall under Paragraphs (h) and (i) of this Rule and with facility(s) that fall under Subparagraph (l)(4) of this Rule may elect to include the facilities in a combined cost report and elect to cost settle under either Paragraphs (h) and (i) or Subparagraph (l)(4) of this Rule. The cost settlement election shall be made each year, 30 days prior to the cost report due date.

(o) Each out-of-state provider shall be reimbursed at the lower of the applicable North Carolina rate, as established by this plan for in-state facilities, or the provider's per diem rate as established by the state in which the provider is located. An out-of-state provider is defined as a provider that is enrolled in the Medicaid program of another state and provides ICF-MR services to a North Carolina Medicaid client in a facility located in the state of enrollment. Rates for out-of-state providers are not subject to cost settlement.

(p) Under no circumstances shall the Medicaid per diem rate exceed the private pay rate of a facility.

(q) Should the Division of Medical Assistance be unable to establish a rate for a facility, based on this Rule and the applicable facts known, the Division of Medical Assistance may approve an interim rate.

(1) The interim rate shall not exceed the rate cap established under this Rule for the applicable facility group.

(2) The interim rate shall be replaced by a permanent rate, effective retroactive to the commencement of the interim rate, by the Division of Medical Assistance, upon the determination of said rate based on this Rule and the applicable facts.

(3) The provider shall repay to the Division of Medical Assistance any overpayment resulting from the interim rate exceeding the subsequent permanent rate.

(r) In addition to the prospective per diem rate developed under this Rule, effective July 1, 1992, an interim payment add on shall be applied to the total rate to cover the estimated cost required under Title 29, Part 1910, Subpart 2, Rule 1910.1030 of the Code of Federal Regulations. The interim rate shall be subject to final settlement reconciliation with reasonable cost to meet the requirements of Rule 1910.1030. The final settlement reconciliation shall be effectuated during the annual cost report settlement process. An interim rate add on to the prospective rate shall be allowed, subject to final settlement reconciliation, in subsequent rate periods until cost history is available to include the cost of meeting the requirements of Rule 1910.1030 in the prospective rate. This interim add on shall be removed,

upon 10 days written notice to providers, should it be determined by appropriate authorities that the requirements under Title 29, Part 1910, Subpart 2, Rule 1910.1030 of the Code of Federal Regulations do not apply to ICF-MR facilities.

(s) All rates, except those noted otherwise in this Rule, approved under this Rule are considered to be permanent.

(t) In the event that the rate for a facility cannot be developed so that it shall be effective on the first day of the rate period, due to the provider not submitting the required reports by the due date, the average rate for facilities in the same facility group, or the facility's current rate, whichever is lower, shall be in effect until such time as the Division of Medical Assistance can develop a new rate.

(u) When the Division of Medical Assistance develops a new rate for a facility for which a rate was paid in accordance with Paragraph (t) of this Rule, the rate developed shall be effective on the first day of the second month following the receipt by the Division of Medical Assistance of the required reports. The Division of Medical Assistance may, upon its own motion or upon application and just cause shown by the provider, within 60 days subsequent to submission of the delinquent report, make the rate retroactive to the beginning of the rate period in question. Any overpayment to the provider resulting from this temporary rate being greater than the final approved prospective rate for the facility shall be repaid to the Medicaid Program.

(v) ICF-MR facilities meeting the requirements of the North Carolina Division of Facility Services as a facility affiliated with one or more of the four medical schools in the state and providing services on a statewide basis to children with various developmental disabilities who are in need of long-term high acuity nursing care, dependent upon high technology machines (i.e. ventilators and other supportive breathing apparatus) monitors, and feeding techniques shall have a prospective payment rate that approximates cost of care. The payment rate may be reviewed periodically, no more than quarterly, to assure proper payment. A cost settlement at the completion of the fiscal period year end is required. Payments in excess of cost are to be returned to the Division of Medical Assistance.

(w) A special payment in addition to the prospective rate shall be made in the year that any provider changes from the cash basis to the accrual basis of accounting for vacation leave costs. The amount of this payment shall be determined in accordance with Title XVIII allowable cost principles and shall equal the Medicaid share of the vacation accrual that is charged in the year of the change including the cost of vacation leave earned for that year and all previous years less vacation leave used or expended over the same time period and vacation leave accrued prior to the date of certification. The payment shall be made as a lump sum payment that represents the total amount due for the entire fiscal year. An interim payment may be made based on an estimate of the cost of the vacation accrual. The payment shall be adjusted to actual cost after audit.

(x) The annual prospective rate, effective beginning each July 1, for facilities that commenced operations under the Medicaid Program subsequent to the base year used to establish rates, and therefore did not file a cost report for the base year, shall be based on the facility's initial rate, established in accordance with Paragraph (m) of this Rule, and the applicable price level changes, in accordance with Paragraph (l) of this Rule.

(y) Effective for fiscal years beginning on or after fiscal year 1998, installation cost of Fire Sprinkler Systems in an ICF-MR Facility shall be reimbursed in the following manner.

(1) Upon receipt of the documentation listed in Parts (A) through (E) of this Subparagraph, the Division of Medical Assistance shall reimburse directly to the provider 90 percent of the verified cost.
   (A) All related invoices.
   (B) Verification from the Division of Facility Services that the Sprinkler System is needed.
   (C) Statement from appropriate authorities that the Sprinkler System has been installed.
   (D) Three bids to install the system.
   (E) Prior approval from the Division of Medical Assistance for any installation projected to cost more than twenty-five thousand dollars ($25,000).

(2) The unreimbursed installation cost shall be reimbursed after audit through the annual Cost Settlement Process. This portion shall be offset by profits, after taking into consideration any indirect profits and direct losses. Any overpayments determined after audit shall be returned to the program by the provider through the annual cost settlement process.

(3) The installation of the Sprinkler System is subject to Prudent Buyer Standards contained in the HCFA-15.

(4) The Sprinkler System's installation costs shall be properly recorded on the provider's ICF-MR Cost Report.

History Note: Filed as a Temporary Amendment Eff. July 8, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. Part 447, Subpart C;
Eff. December 1, 1984;
Amended Eff. August 1, 1995; November 1, 1993; March 1, 1988; January 1, 1987;
Temporary Amendment Eff. August 7, 1998.

* *

Rule-making Agency: *Social Services Commission*

Rule Citation: *10 NCAC 49B .0608*

Effective Date: *August 1, 1998*

Findings Reviewed and Approved by: *Julian Mann, III*

Authority for the rule-making: *S.L. 1997-443, Sec. 12.17*

Reason for Proposed Action: *Beginning October 1, 1997 any AFDC or Work First cash assistance benefits recouped by the county that was determined fraudulent, intentional violation or erroneous shall be used to improve and enhance program*

integrity, therefore, 10 NCAC 49B .0608 needs to be temporarily amended to incorporate the disqualification process and the applicable sanctions when a recipient or former recipient has been found to have committed fraud or intentional program violation in order to receive cash benefits for which they were not eligible.

Comment Procedures: *Anyone wishing to comment should contact Sharnese Ransome, APA Coordinator, Social Services Commission, NC Division of Social Services, 325 N. Salisbury St., Raleigh, NC 27603, phone (919) 733-3055.*

CHAPTER 49 - AID TO FAMILIES WITH DEPENDENT CHILDREN (AFDC)

SUBCHAPTER 49B - ELIGIBILITY DETERMINATION

SECTION .0600 - PAYMENT PROCEDURES

.0608 CLIENT FRAUD AND INTENTIONAL PROGRAM VIOLATIONS

(a) County Responsibilities; Fraud Prevention.

(1) The county department of social services shall be responsible for the development of an operational program for fraud prevention, detection and investigation. Fraud program organizational requirements must be established based on the number of ~~(AFDC)~~ (AFDC or Work First) recipients, the effectiveness of the fraud prevention program, the frequency of suspected fraud cases, and the resources available to the agency.

(2) The county department must designate staff to be responsible for fraud activities.

(3) The county shall strive to obtain all Social Security numbers and correctly complete them on computer input forms.

(4) The recipient shall be notified no less frequently than at each eligibility review of his obligation to report within 10 days, all changes in income, resources, or other changes which may effect the amount of payment. Failure to do so within that time may constitute a willful withholding of such information, and permit the county department to recover the overpayment.

(b) County Department Responsibilities; Detection and Investigation:

(1) The county department shall investigate any information which indicates that a recipient may be receiving AFDC or Work First to which ~~he~~ the recipient is not entitled.

(2) In the investigation the staff designated for fraud shall:

(A) verify that all responsibilities have been fulfilled as set forth in the rules and regulations governing the AFDC or Work First program;

(B) determine whether further investigation should be undertaken to support the belief that fraud is suspected;

(C) evaluate the evidence to substantiate fraud and the intent to defraud;

(D) determine the amount of the erroneous payment.

(3) When there is reason to suspect fraud, the county director must ensure that the agency has explained to the client his responsibilities for reporting changes in his circumstances to the agency. The director shall determine whether the agency should investigate further and shall present the case and fraud summary to the county board of social services for action unless the board has delegated this responsibility to him.

(4) The fraud summary shall include:

(A) identifying information;

(B) a description of the fraudulent act;

(C) evidence to substantiate fraud and the intent to defraud;

(D) evidence to substantiate the amount of ineligible assistance received;

(E) information concerning the client's competency, educational background, ability to know right from wrong, any statement volunteered by the client in response to the accusation and any other information which may help explain the client's current situation.

(c) County Board's Responsibilities.

(1) The county board of social services, or its designee, shall be responsible for determining whether there is a basis for the belief that misrepresentation may have been committed by a person.

(2) The county board, or its designee, shall determine if the person:

(A) willfully and knowingly misstated, provided incorrect or misleading information in response to either oral or written questions; or

(B) willfully and knowingly failed to report changes which might have affected the amount of payment; or

(C) willfully and knowingly failed to report the receipt of benefits which he knew he was not entitled to receive.

(3) There must be physical evidence to substantiate a determination that fraud was the reason for the overpayment.

(4) If the board, or its designee, determines fraud is suspected, it shall instruct the agency to pursue one or more, of the following actions:

(A) administrative recoupment which is defined as:

(i) involuntary reduction of the AFDC or Work First ~~Work First~~ grant may be collected from all income and assets of the assistance unit. The assistance unit shall retain an amount not less than 90 percent of the assistance payment received by a family of similar composition with no other income; or

(ii) a voluntary grant reduction. There is no

limitation on the amount of the reduction;

(iii) voluntary recipient refund. There is no limitation on the amount of the refund:

(B) administrative disqualification:

(i) Hearing

(I) An administrative disqualification hearing will be initiated by the county department of social services when there is sufficient evidence to indicate that an individual has intentionally violated a program regulation in order to receive cash assistance for which the individual is not eligible. The hearing will be held and any administrative action initiated within 90 days of the date the individual is notified in writing that the hearing has been scheduled. No hearing will be held when the amount of the overpayment is less than one hundred dollars ($100.00).

(II) The county board of social services shall designate the county director or their impartial county employee to act as the hearings officer. Duties are to:
provide written notification of the hearing date, time, and location to the client at least 30 days in advance of the date of the hearing. Written notification of the hearing shall include the client's right to have legal representation, a witness or witnesses, or waive the hearing.
conduct the hearing to collect all evidence and testimony.
render a written decision to the client and DSS within 15 days as to whether an intentional program violation has occurred. Written notification that the hearing decision will be mailed by Certified Mail - Return Receipt Requested.
The notice will inform the client of the right to further appeal to the state (or higher local authority) and the procedures for such appeal. When an intentional program violation is found, the notification will inform the client of the length of the sanction and that client remains a part of the Work First case and subject to all program requirements. When no intentional program violation is found, the notification will inform the client that the overpayment will be collected pursuant to 10 NCAC 49B .0606.

(ii) Sanctions:

(I) The county department of social services shall apply disqualification sanctions as follows: 12 months of ineligibility for the first offense; 24 months for the second offense; and permanently disqualified for the third offense.

(II) The sanction shall be applied by reducing the work first cash assistance payment by the disqualified person's share of the payment for the appropriate period of sanction. The disqualified person remains a part of the work first case and subject to all program requirements.

(iii) Repayment:
The county department of social services will follow procedures pursuant to Part (c)(4)(A) of this Rule in the collection of overpayments.

~~(B)~~ (C) civil court action; or

~~(C)~~ (D) criminal court action.

(d) Board Decision; Agency Follow-up:

(1) If the board, or its designee, suspects fraud, the department's findings and actions shall be reported immediately to the assistance payments section. The county director shall keep the county board and assistance payments section informed on all cases referred for court and repayment action.

(2) The county department of social services is responsible for supporting the local prosecutor by accomplishing necessary interviews in accordance with the prosecutor's requirements, recommending possible witnesses, providing necessary investigative reports, and taking other action deemed necessary by legal authorities.

(3) Regardless of what action is taken by the board or the court, the county shall continue to work with the client and shall promptly notify the client of the action taken in his case.

(4) The county shall maintain records on the number of cases referred for investigation, the number of suspected fraud referrals, action taken to recover the overpayment and amounts recovered.

(e) In fraud cases, if a county fails to act promptly on indications of ineligibility, federal and state financial

participation shall not be available.

History Note: Authority G.S. 108A-25; 108A-39; 143B-153; S.L. 1997-443; 45 C.F.R. 233.20; 45 C.F.R. 235.110; Eff. February 1, 1984; Amended Eff. June 1, 1990; February 1, 1986; Temporary Amendment Eff. August 1, 1998.

TITLE 11 - DEPARTMENT OF INSURANCE

Rule-making Agency: *Department of Insurance*

Rule Citation: *11 NCAC 12 .0840 - .0842*

Effective Date: *August 1, 1998*

Findings Reviewed by Julian Mann: *Approved*

Authority for the rule-making: *G.S. 58-2-40, 58-54-10, 58-54-15, 58-54-25*

Reason for Proposed Action: *The Balanced Budget Act of 1997 became effective July 1, 1998, and requires state medicare supplement rules to adopt NAIC Medicare Supplement Insurance Minimum Standards Model Regulations.*

Comment Procedures: *Written comments may be sent to Theresa Shackelford, NC Department of Insurance, PO Box 26387, Raleigh, NC 27611.*

CHAPTER 12 - LIFE AND HEALTH DIVISION

SECTION .0800 - MEDICARE SUPPLEMENT INSURANCE

.0840 HIGH DEDUCTIBLE PLANS

(a) In addition to the benefit plans specified in 11 NCAC 12 .0836, the following high deductible benefit plans are authorized for use in this State. The provisions of 11 NCAC 12 .0836(a) through (d) apply to the plans in this Rule.

(1) Standardized Medicare supplement benefit high deductible Plan F shall include only the following: 100% of covered expenses following the payment of the annual high deductible Plan F deductible. The covered expenses include the core benefit as defined in 11 NCAC 12 .0835(2), plus the Medicare Part A deductible, skilled nursing facility care, the Medicare Part B deductible, 100% of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in 11 NCAC 12 .0835(3)(a), (b), (c), (e), and (h) respectively. The annual high deductible Plan F deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement Plan F policy, and shall be in addition to any other specific benefit deductibles. The annual high deductible Plan F deductible shall be one thousand five hundred dollars ($1500) for 1998 and 1999, and shall be based on the calendar year.

(2) Standardized Medicare supplement benefit high deductible Plan J shall consist of only the following: 100% of covered expenses following the payment of the annual high deductible Plan J deductible. The covered expenses include the core benefit as defined in 11 NCAC 12 .0835(2), plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, 100% of the Medicare Part B excess charges, extended outpatient prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care benefit and at-home recovery benefit as defined in 11 NCAC 12 .0835(3)(a), (b), (c), (e), (g), (h), (i), and (j) respectively. The annual high deductible Plan J deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement Plan J policy, and shall be in addition to any other specific benefit deductibles. The annual deductible shall be one thousand five hundred dollars $1500 for 1998 and 1999, and shall be based on a calendar year.

(b) After 1999, the annual deductibles for the plans described in Subparagraphs (a)(1) and (a)(2) of this Rule shall be those established annually by the Secretary of the United States Department of Health and Human Services to reflect the change in the Consumer Price Index for all urban consumers for the 12-month period ending with August of the preceding year, and rounded to the nearest multiple of ten dollars ($10).

History Note: Authority G.S. 58-2-40; 58-54-10; 58-54-15; 58-54-25; Temporary Adoption Eff. August 1, 1998.

.0841 CREDITABLE COVERAGE

(a) As used in this Rule:

(1) "Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than 63 days.

(2) "Creditable coverage" has the same meaning as in G.S. 58-68-30(c)(1).

(b) If an applicant qualifies under 11 NCAC 12 .0837(a) and submits an application during the time period referenced in 11 NCAC 12 .0837(a) and, as of the date of application, has had a continuous period of creditable coverage of at least six months, the issuer shall not exclude benefits based on a preexisting condition.

(c) If the applicant qualifies under 11 NCAC 12 .0837(a) and submits an application during the time period referenced in 11 NCAC 12 .0837(a) and, as of the date of application, has had a continuous period of creditable coverage that is less than six months, the issuer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date.

The manner of the reduction under this Paragraph shall be a prescribed by the Secretary of the United States Department of Health and Human Services.

(d) 11 NCAC 12 .0837(b) does not apply to this Rule.

History Note: *Authority G.S. 58-2-40; 58-54-10; 58-54-15; 58-54-25;*
Temporary Adoption Eff. August 1, 1998.

.0842 GUARANTEED ISSUE FOR ELIGIBLE PERSONS

(a) As used in this Rule:

(1) "Bankruptcy" means when a Medicare+Choice organization that is not an issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in the state.

(2) "Employee welfare benefit plan" means a plan, fund or program of employee benefits as defined in 29 U.S.C. §1002 (Employee Retirement Income Security Act).

(3) "Insolvency" means when an issuer, licensed to transact the business of insurance in this State, has had a final order of liquidation entered against it with a finding of insolvency by a court of competent jurisdiction in the issuer's state of domicile.

(4) "Medicare+Choice plan" means a plan of coverage for health benefits under Medicare Part C as defined in Section 1859, Title IV, Subtitle A, Chapter 1 of P.L. 105-33, and includes:

(A) Coordinated care plans which provide health care services, including but not limited to health maintenance organization plans (with or without a point-of-service option), plans offered by provider-sponsored organizations, and preferred provider organization plans;

(B) Medicare medical savings account plans coupled with a contribution into a Medicare+Choice medical savings account; and

(C) Medicare+Choice private fee-for-service plans.

(b) Eligible persons are those individuals described in Paragraph (c) of this Rule who apply to enroll under the policy not later than 63 days after the date of the termination of enrollment described in Paragraph (c) of this Rule, and who submit evidence of the date of termination or disenrollment with the application for a Medicare supplement policy.

With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in Paragraph (d) of this Rule that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.

(c) An eligible person is an individual described in any of the following subparagraphs:

(1) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare; and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual;

(2) The individual is enrolled with a Medicare+Choice organization under a Medicare+Choice plan under part C of Medicare, and there are circumstances permitting discontinuance of the individual's election of the plan under the first sentence of Section 1851(e)(4) of the federal Social Security Act, which consists of the following:

"Effective as of January 1, 2002, an individual may discontinue an election of a Medicare+Choice plan offered by a Medicare+Choice organization other than during an annual, coordinated election period [under Medicare] and make a new election under this section if:

(A) The organization's or plan's certification [under this part] has been terminated or the organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;

(B) The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary of the United States Department of Health and Human Services, but not including termination of the individual's enrollment on the basis described in Section 1851(g)(3)(B) of the federal Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under Section 1856), or the plan is terminated for all individuals within a residence area;

(C) The individual demonstrates, in accordance with guidelines established by the Secretary of the United States Department of Health and Human Services, that:

(i) The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

(ii) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

(D) The individual meets such other exceptional conditions as the Secretary of the United States

Department of Health and Human Services may provide."

(3) The individual is enrolled with:

(A) An eligible organization under a contract under Section 1876 (Medicare risk or cost); or

(B) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999; or

(C) An organization under an agreement under Section 1833(a)(1)(A) (health care prepayment plan); or

(D) An organization under a Medicare Select policy; and

(E) The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under the first sentence of Section 1851(e)(4) of the federal Social Security Act as delineated in Subparagraph (2) of this Paragraph.

(4) The individual is enrolled under a Medicare supplement policy and the enrollment ceases because:

(A) Of the insolvency of the issuer or bankruptcy of the nonissuer organization or of other involuntary termination of coverage or enrollment under the policy;

(B) The issuer of the policy substantially violated a material provision of the policy; or

(C) The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual;

(5) The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare+Choice organization under a Medicare+Choice plan under part C of Medicare, any eligible organization under a contract under Section 1876 (Medicare risk or cost), any similar organization operating under demonstration project authority, an organization under an agreement under Section 1833(a)(1)(A) (health care prepayment plan), or a Medicare Select policy; and the subsequent enrollment is terminated by the enrollee during any period within the first 12 months after the subsequent enrollment (during which the enrollee is permitted to terminate the subsequent enrollment under Section 1851(e) of the federal Social Security Act); or

(6) The individual, upon first becoming eligible for benefits under part A of Medicare at age 65, enrolls in a Medicare+Choice plan under part C of Medicare, and disenrolls from the plan by not later than 12 months after the effective date of enrollment.

(d) The Medicare supplement policy to which eligible persons are entitled under:

(1) Subparagraphs (c)(1), (2), (3) and (4) of this Rule is a Medicare supplement policy which has a benefit package classified as Plan A, B, C, or F offered by any issuer.

(2) Subparagraph (c)(5) is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in Subparagraph (1) of this Paragraph.

(3) Subparagraph (c)(6) shall include any Medicare supplement policy offered by any issuer.

(e) At the time of an event described in Paragraph (c) of this Rule because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his or her rights under this Section, and of the obligations of issuers of Medicare supplement policies under Paragraph (b) of this Rule. Such notice shall be communicated contemporaneously with the notification of termination. At the time of an event described in Paragraph (c) of this Rule because of which an individual ceases enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his or her rights under this Section, and of the obligations of issuers of Medicare supplement policies under Paragraph (b) of this Rule. Such notice shall be communicated within 10 working days of the issuer receiving notification of disenrollment.

History Note: Authority G.S. 58-2-40; 58-54-10; 58-54-15; 58-54-25;
Temporary Adoption Eff. August 1, 1998.

TITLE 15A - DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Rule-making Agency: *Commission for Health Services*

Rule Citation: *15A NCAC 13B .1624*

Effective Date: *July 8, 1998*

Findings Reviewed by Julian Mann: *Approved*

Authority for the rule-making: *G.S. 130A-290; 130A-294; SL 1997-374*

Reason for Proposed Action: *The rule amendment is proposed to satisfy the General Assembly's legislated request to the Commission (House Bill 1032) and was drafted by the Division of Waste Management (Solid Waste Section) staff and members of the North Carolina chapter of the Solid Waste Association of America.*

Comment Procedures: *The Division of Waste Management is in the process of drafting a temporary rule that would amend*

current regulatory requirements for landfill liner design. Comments or requests for copies of the proposed draft rule may be addressed to Joan Troy, Solid Waste Section, 401 Oberlin Road, Suite 150, Raleigh, NC 27605, or phone (919) 733-0692, ext. 271, or email troyjb@wastenot.ehnr.state.nc.us.

CHAPTER 13 - SOLID WASTE MANAGEMENT

SUBCHAPTER 13B - SOLID WASTE MANAGEMENT

SECTION .1600 - REQUIREMENTS FOR MUNICIPAL SOLID WASTE LANDFILL FACILITIES (MSWLFs)

.1624 CONSTRUCTION REQUIREMENTS FOR MSWLF FACILITIES

(a) This Rule establishes the performance standards and minimum criteria for designing and constructing a new MSWLF unit or lateral expansion of existing MSWLF units. Additional standards for the cap system are described in Rule .1627 of this Section.

(b) New MSWLF units and lateral expansions shall comply with the following design and construction criteria:

(1) Base liner system description. The base liner system is constructed on the landfill subgrade and shall be designed to efficiently contain, collect and remove leachate generated by the MSWLF unit. At a minimum, the components of the liner system shall consist of the following.

(A) A Base Liner. The base liner shall consist of one of the following designs. The design described in Subpart (b)(1)(A)(i) of this Rule is the standard composite liner. If a landfill owner or operator proposes to utilize one of the alternative composite liner designs described in Subparts (b)(1)(A)(ii) and (iii) of this Rule, the owner or operator shall demonstrate through a model acceptable to the Division that the proposed design will ensure that maximum concentration levels (MCLs) listed in Table 1 will not be exceeded in the uppermost aquifer at the relevant point of compliance as established in Rule .1631(a)(2) of this Section. For these two designs, the Division may waive the site-specific modeling requirement if it can be demonstrated that a previous site for which a model was approved had similar hydrogeologic characteristics, climatic factors and volume and physical and chemical leachate characteristics. If an alternative liner design other than Subparts (b)(1)(A)(ii) and (iii) of this Rule is proposed, the Division shall require site-specific, two-phase modeling as described in Subpart (b)(1)(A)(iv) of this Rule.

~~(A)~~(i) A composite ~~liner.~~ liner utilizing a compacted clay liner (CCL). The composite liner is one liner ~~which~~ that consists of two components; a geomembrane liner installed above and in direct and uniform contact with a compacted clay ~~liner.~~ liner with a minimum thickness of 24 inches (0.61 m) and a permeability of no more than 1.0 X 10^{-7} cm/sec. The composite liner shall be designed and constructed in accordance with Subparagraphs (b)(8) and ~~(9).~~ (10) of this Rule.

(ii) A composite liner utilizing a geosynthetic clay liner (GCL). The composite liner is one liner that consists of three components: a geomembrane liner installed above and in uniform contact with a GCL overlying a compacted clay liner with a minimum thickness of 18 inches (0.46 m) and a permeability of no more than 1.0 X 10^{-5} cm/sec. The composite liner shall be designed and constructed in accordance with Subparagraphs (8), (9), and (10) of this Rule.

(iii) A composite liner utilizing two geomembrane liners. The composite liner consists of three components; two geomembrane liners each with an overlying leachate drainage system designed to reduce the maximum predicted head acting on the lower membrane liner to less than one inch. The lower membrane liner shall overlie a compacted clay liner with a minimum thickness of 12 inches (0.31m) and a permeability of no more than 1.0 X 10^{-5} cm/sec. The composite liner system shall be designed and constructed in accordance with Subparagraphs (b)(8) and (10) of this Rule.

(iv) An alternative base liner. An alternative base liner system may be approved by the Division if the owner or operator demonstrates through a two-phase modeling approach acceptable to the Division that the alternative liner design meets the following criteria:

(I) the rate of leakage through the alternative liner system will be less than or equal to the composite liner system defined in Subpart (b)(1)(A)(i) of this Rule; and

(II) the design will ensure that concentration values listed in Table 1 will not be exceeded in the uppermost aquifer at the relevant point of compliance as established in Rule .1631(a)(2) of this Section.

(B) A leachate collection system (LCS). The LCS

is constructed directly above the ~~composite~~ base liner and shall be designed to effectively collect and remove leachate from the MSWLF unit. The secondary function of the LCS is to establish a zone of protection between the ~~composite~~ base liner and the waste. The LCS shall be designed and constructed in accordance with Subparagraphs (b)(2), ~~(10)~~, (11), ~~and (12).~~ (12) and (13) of this Rule.

(2) Leachate collection system ~~design.~~ design and operation.

(A) The leachate collection system shall be hydraulically designed to remove leachate from the landfill and ensure that the leachate head on the composite liner does not exceed one foot. A means of quantitatively assessing the performance of the leachate collection system ~~under uniform conditions~~ must be provided in the engineering plan. The performance analysis must evaluate the flow capacities of the ~~pipe~~ drainage network necessary to convey leachate to the storage facility or off-site transport location. The engineering evaluation shall incorporate the following criteria:

~~(i) At a minimum, the impingement rate on the drainage layer shall be equal to the peak monthly precipitation rate to evaluate the relationship between base slope, drainage layer permeability, and collector pipe spacing.~~

~~(ii)~~(i) At a minimum, the geometry of the landfill and the leachate collection system shall be designed to control and contain the volume of leachate generated by the 24-hour, 25-year storm.

~~(iii)~~(ii) The performance analysis shall evaluate the leachate collection system for the flow capacities during conditions when the maximum impingement rate occurs on the LCS. ~~Collection pipe~~ The LCS flow capacity shall be ~~sized~~ designed to ~~drain the critical volume of leachate~~ reduce the head on the liner system generated by the 24-hour, 25-year storm to less than one foot within 72 hours after the storm event. ~~in a specified period of time.~~

(B) The leachate collection system shall be designed to provide a zone of protection at least 24 inches ~~thick~~ separating the composite liner from landfilling ~~activities.~~ activities, or shall be subject to approval from the Division upon a demonstration of equivalent protection for the liner system.

(C) The leachate collection system shall be designed to resist ~~include a drainage layer, a pipe network with clean outs, and the necessary filters designed to prevent physical~~ clogging and promote leachate collection and removal from the landfill.

(D) The leachate collection system shall be operated to remove leachate from the landfill in such a way as to ensure that the leachate head on the composite liner does not exceed one foot under normal operating conditions.

(3) Horizontal separation requirements.

(A) Property line buffer. New MSWLF units at a new facility shall establish a minimum 300-foot buffer between the MSWLF unit and all property lines.

(B) Private residences and wells. All MSWLF units at a new facility shall establish a minimum 500-foot buffer between the MSWLF unit and existing private residences and wells.

(C) Surface waters. All MSWLF units at new facilities shall establish a minimum 50-foot buffer between the MSWLF unit and any stream, river, or lake, unless the owner or operator can demonstrate:

(i) To the Division that the alternative management of the water and any discharge will adequately protect the public health and environment; and

(ii) That the construction activities will conform to the requirements of Sections 404 and 401 of the Clean Water Act.

(D) Existing landfill units. An adequate buffer distance shall be established between a new MSWLF unit and any existing landfill units to establish a ground-water monitoring system as set forth in Rule .1631 of this Section.

(E) Existing facility buffers. At a minimum, a lateral expansion or new MSWLF unit at an existing facility shall conform to the requirements of the effective permit.

(4) Vertical separation requirements. A MSWLF unit shall be constructed so that the post settlement bottom elevation of the base liner system is a minimum of four feet above the seasonal high ground-water table and bedrock. The nature of the materials establishing this separation shall be subject to Division approval.

(5) Survey control. One permanent benchmark of known elevation measured from a U.S. Geological Survey benchmark shall be established and maintained for each 50 acres of developed landfill, or part thereof, at the landfill facility. This benchmark shall be the reference point for establishing vertical elevation control.

(6) Location coordinates. The North Carolina State Plane (NCSP) coordinates shall be established and one of its points shall be the benchmark of known NCSP coordinates.

(7) Landfill subgrade. The landfill subgrade is the in-situ soil layer(s), constructed embankments, and select fill

providing the foundation for construction of the unit. A foundation analysis shall be performed to determine the structural integrity of the subgrade to support the loads and stresses imposed by the weight of the landfill and to support overlying facility components and maintain their integrity of the components. Minimum post-settlement slope for the subgrade shall be two percent. Safety factors shall be adequately specified for facilities located in a Seismic Impact Zones.

(A) Materials required. The landfill subgrade shall be adequately free of organic material and consist of in-situ soils or a select fill if approved by the Division.

(B) Construction requirements.

(i) The landfill subgrade shall be graded in accordance with the Division approved plans and specifications.

(ii) The owner or operator of the MSWLF units may be required by the permit to notify the Division's hydrogeologist and inspect the subgrade when excavation is completed or if bedrock or other unpredicted subsurface conditions are encountered during excavation.

(C) Certification requirements. At a minimum, the subgrade surface shall be inspected in accordance with the following requirements:

(i) Before beginning construction of the base liner system, the project engineer shall visually inspect the exposed surface to evaluate the suitability of the subgrade and document that the surface is properly prepared and that the elevations are consistent with the Division approved engineering plans;

(ii) The subgrade shall be proof-rolled using procedures and equipment specified by the design or project engineer; and

(iii) The subgrade shall be tested for density and moisture content at a minimum frequency specified in the Division approved plans.

(8) Compacted clay liners. Compacted clay liners are low permeability barriers designed to control fluid migration in a cap liner system or base liner system.

(A) Materials required. The soil materials used in constructing a compacted clay liner may consist of on-site or off-site sources, or a combination of sources; sources may possess adequate native properties or may require bentonite conditioning to meet the permeability requirement. The soil material shall be free of particles greater than three inches in any dimension.

~~(i) For the base liner system, the compacted clay liner shall be constructed with a minimum thickness of 24 inches (0.61 m) and a permeability of no more than 1 X 10^{-7} cm/sec.~~

~~(ii) For the cap system, the compacted clay liner shall be constructed with a minimum thickness of 18 inches (0.46 m) and a permeability of no more than 1 X 10^{-5} cm/sec.~~

(B) Construction requirements. Construction methods for the compacted clay liner shall be based upon the type and quality of the borrow source and shall be verified in the field by constructing test pad(s). The project engineer shall ensure that the compacted clay liner installation conforms with the Division approved plans including the following minimum requirements:

(i) A test pad shall be constructed prior to beginning installation of the compacted clay liner and whenever there is a significant change in soil material properties. The area and equipment, liner thickness, and subgrade slope and conditions shall be representative of full scale construction. Acceptance and rejection criteria shall be verified for the tests specified in accordance with Part (C) of this Subparagraph. For each lift, a minimum of three test locations shall be established for testing moisture content, density, and a composite sample for recompacted lab permeability. At least one shelby tube sample for lab permeability testing, or another in situ test approved by the Division, shall be obtained per lift.

(ii) Soil conditioning, placement, and compaction shall be maintained within the range identified in the moisture-density-permeability relation developed in accordance with Subpart (C) of this Subparagraph.

(iii) The final compacted thickness of each lift shall be a maximum of six inches.

(iv) Prior to placement of successive lifts, the surface of the lift in place shall be scarified or otherwise conditioned to eliminate lift interfaces.

(v) The final lift shall be adequately protected from environmental degradation.

(C) Certification requirements. The project engineer shall include in the construction quality assurance report a discussion of all quality assurance and quality control testing required in this Subparagraph. The testing procedures and protocols shall be submitted in accordance with Rule .1621 of this Section and approved by the Division. The results of all

testing shall be included in the construction quality assurance report including documentation of any failed test results, descriptions of the procedures used to correct the improperly installed material, and statements of all retesting performed in accordance with the Division approved plans

including the following requirements:

(i) At a minimum, the quality control testing for accepting materials prior to and during construction of a compacted clay liner shall include: particle size distribution analysis, Atterberg limits, triaxial cell laboratory permeability, moisture content, percent bentonite admixed with soil, and the moisture-density-permeability relation. The project engineer shall certify that the materials used in construction were tested according to the Division approved plans.

(ii) At a minimum, the quality assurance testing for evaluating each lift of the compacted clay liner shall include: moisture content and density, and permeability testing. For each location the moisture content and density shall be compared to the appropriate moisture-density-permeability relation. The project engineer shall certify that the liner was constructed using the methods and acceptance criteria consistent with test pad construction and tested according to the Division approved plans.

(iii) Any tests resulting in the penetration of the compacted clay liner shall be repaired using bentonite or as approved by the Division.

(9) Geosynthetic Clay liners. Geosynthetic clay liners are geosynthetic hydraulic barriers manufactured in sheets and installed by field seaming techniques.

(A) Materials required. Geosynthetic clay liners shall consist of natural sodium bentonite clay or equivalent, encapsulated between two geotextiles or adhered to a geomembrane. The liner material and any seaming materials shall have chemical and physical resistance not adversely affected by environmental exposure, waste placement, leachate generation and subgrade moisture composition. Accessory bentonite, used for seaming, repairs and penetration seaming shall be made from the same sodium bentonite as used in the geosynthetic clay liner or as recommended by the manufacturer. The type of geosynthetic clay liner shall be approved by the Division according to the criteria set forth in this Part.

(i) Reinforced geosynthetic clay liners shall be used on all slopes greater than 10H:1V.

(ii) The geosynthetic clay liner material shall have a demonstrated hydraulic conductivity of not more than 5.0×10^{-9} cm/sec under the anticipated confining pressure.

(B) Design and Construction requirements. The design engineer shall ensure that the design of the geosynthetic clay liner installation conforms to the requirements of the manufacturer's recommendations and the Division approved plans. The Division approved plans shall provide for and include the following provisions:

(i) The surface of the supporting soil upon which the geosynthetic clay liner will be installed shall be reasonably free of stones, organic matter, protrusions, loose soil, and any abrupt changes in grade that could damage the geosynthetic clay liner;

(ii) Materials placed on top of the GCL shall be placed according to Division approved plans. Equipment used to install additional geosynthetics shall be specified by the design engineer and as recommended by the manufacturer. A minimum of 12 inches of separation between the application equipment and the geosynthetic clay liner shall be provided when applying soil materials;

(iii) Materials which become prematurely hydrated shall be removed, repaired, or replaced, as specified by the project engineer and the Division approved plans.

(iv) Field seaming preparation and methods, general orientation criteria, and restrictive weather conditions;

(v) Anchor trench design;

(vi) Critical tensile forces and slope stability, including seismic design;

(vii) Protection from environmental damage; and

(viii) Physical protection from the materials installed directly above the geosynthetic clay liner.

(C) Certification requirements.

(i) The project engineer shall ensure that the geosynthetic clay installation conforms to the requirements of the manufacturer's recommendations and the Division approved plans.

(ii) The project engineer shall include in the construction quality assurance report a discussion of quality assurance and

quality control testing to document that material is placed according to the approved plans.

(iii) The project engineer shall include in the construction quality assurance report a discussion of the approved data resulting from the quality assurance and quality control testing required in this Subparagraph.

(iv) The testing procedures and protocols for field installation shall be submitted in accordance with Rule .1621 of this Section and approved by the Division.

(v) The results of all testing shall be included in the construction quality assurance report, including documentation of any failed test results, descriptions of the procedures used to correct the improperly installed material, and statements of all retesting performed in accordance with the Division approved plans including the following:

(I) Quality control testing of the raw materials and manufactured product;

(II) Field and independent laboratory destructive testing of geosynthetic clay liner samples;

(III) Before beginning installation of the geosynthetic clay liner, the project engineer shall visually inspect the exposed surface to evaluate the suitability of the subgrade and document that the surface is properly prepared and that the elevations are consistent with the Division approved engineering plans.

~~(9)~~(10) Geomembrane liners. Geomembrane liners are geosynthetic hydraulic barriers manufactured in sheets and installed by field seaming techniques.

(A) Materials required. ~~The geomembrane liner material shall have a demonstrated water vapor transmission rate of not more than 0.03 gm/m^2-day.~~ The liner material and any seaming materials shall have chemical and physical resistance not adversely affected by environmental exposure, waste placement and leachate generation. The type of geomembrane shall be approved by the Division according to the criteria set forth in this Part.

(i) High density polyethylene geomembrane liners shall have a minimum thickness of 60 mils.

(ii) The minimum thickness of any geomembrane approved by the Division shall be greater than 30 mils.

(B) Construction requirements. The project engineer shall ensure that the geomembrane installation conforms to the requirements of the manufacturer's recommendations and the Division approved plans including the following:

(i) The surface of the supporting soil upon which the geomembrane will be installed shall be reasonably free of stones, organic matter, protrusions, loose soil, and any abrupt changes in grade that could damage the geomembrane;

(ii) Field seaming preparation and methods, general orientation criteria, and restrictive weather conditions;

(iii) Anchor trench design;

(iv) Critical tensile forces and slope stability;

(v) Protection from environmental damage; and

(vi) Physical protection from the materials installed directly above the geomembrane.

(C) Certification requirements. The project engineer shall include in the construction quality assurance report a discussion of the approved data resulting from the quality assurance and quality control testing required in this Subparagraph. The testing procedures and protocols for field installation shall be submitted in accordance with Rule .1621 of this Section and approved by the Division. The results of all testing shall be included in the construction quality assurance report including documentation of any failed test results, descriptions of the procedures used to correct the improperly installed material, and statements of all retesting performed in accordance with the Division approved plans including the following:

(i) Quality control testing of the raw materials and manufactured product;

(ii) At a minimum, test seams shall be made upon each start of work for each seaming crew, upon every four hours of continuous seaming, every time seaming equipment is changed or if significant changes in geomembrane temperature and weather conditions are observed;

(iii) Nondestructive testing of all seams; and

(iv) Field and independent laboratory destructive testing of seam samples.

~~(10)~~(11) Leachate collection pipes. A leachate collection pipe network shall be a component of the leachate collection system and shall be hydraulically designed to convey leachate from the MSWLF unit to an appropriately sized leachate storage or treatment

facility or a point of off-site transport. Leachate collection piping shall comply with the following:

(A) Materials required.

(i) The leachate collection piping shall have a minimum nominal diameter of six inches.

(ii) The chemical properties of the pipe and any materials used in installation shall not be adversely affected by waste placement or leachate generated by the landfill.

(iii) The physical properties of the pipe shall provide adequate structural strength to support the maximum static and dynamic loads and stresses imposed by the overlying materials and any equipment used in construction and operation of the landfill. Specifications for the pipe shall be submitted in the engineering report.

(B) Construction requirements.

(i) Leachate collection piping shall be installed according to the Division approved plan.

(ii) The location and grade of the piping network shall provide access for periodic cleaning.

(iii) The bedding material for the leachate collection pipe shall consist of a coarse aggregate installed in direct contact with the pipe. The aggregate shall be chemically compatible with the leachate generated and shall be placed to provide adequate support to the pipe. The bedding material for main collector lines shall be extended to and in direct contact with the waste layer or a graded soil or granular filter.

(C) Certification requirements. The project engineer shall include in the construction quality assurance report a discussion of the quality assurance and quality control testing to ensure that the material is placed according to the approved plans. The testing procedures and protocols for field installation shall be submitted in accordance with Rule .1621 of this Section and approved by the Division. The results of all testing shall be included in the construction quality assurance report including ~~documention~~ documentation of any failed test results, descriptions of the procedures used to correct the improperly installed material, and statements of all retesting performed in accordance the Division approved plans including the following:

(i) All leachate piping installed from the MSWLF unit to the leachate storage or treatment facility shall be watertight.

(ii) The seal where the piping system penetrates the geomembrane shall be inspected and non-destructively tested for leakage.

~~(11)~~(12) Drainage layers. Any soil, granular, or geosynthetic drainage nets used in the leachate collection system shall conform to the following requirements:

(A) Materials required.

(i) The chemical properties of the drainage layer materials shall not be adversely affected by waste placement or leachate generated by the landfill.

(ii) The physical and hydraulic properties of the drainage layer materials shall promote lateral drainage of leachate through a zone of relatively high permeability or transmissivity under the predicted loads imposed by overlying materials.

(B) Construction requirements.

(i) The drainage layer materials shall be placed according to the Division approved plans and in a manner which prevents equipment from working directly on the geomembrane.

(ii) The drainage layer materials shall be stable on the slopes specified on the engineering drawings.

(C) Certification requirements. The project engineer shall include in the construction quality assurance report a discussion of the quality assurance and quality control testing to ensure that the drainage layer material is placed according to the approved plans. The testing procedures and protocols for field installation shall be submitted in accordance with of Rule .1621 of this Section and approved by the Division. The results of all testing shall be included in the construction quality assurance report including documentation of any failed test results, descriptions of the procedures used to correct the improperly installed material, and statements of all retesting performed in accordance with the Division approved plans.

~~(12)~~(13) Filter layer criteria. All filter collection layers used in the leachate collection system shall be designed to prevent the migration of fine soil particles into a courser grained material, and permit water or gases to freely enter a drainage medium (pipe or drainage layer) without clogging.

(A) Materials required.

(i) Graded cohesionless soil filters. The granular soil material used as a filter shall have no more than five percent by weight passing the No. 200 sieve and no soil particles larger than three inches in any dimension.

(ii) Geosynthetic filters. Geosynthetic filter

materials shall demonstrate adequate permeability and soil particle retention, and chemical and physical resistance which is not adversely affected by waste placement, any overlying material or leachate generated by the landfill.

(B) Construction requirements. All filter layers shall be installed in accordance with the approved engineering plan and specifications. Geosynthetic filter materials shall not be wrapped directly around leachate collection piping.

(C) Certification requirements. The project engineer shall include in the construction quality assurance report a discussion of the quality assurance and quality control testing to ensure that the filter layer material is placed according to the approved plans. The testing procedures and protocols for field installation shall be submitted in accordance with Rule .1621 of this Section and approved by the Division. The results of all testing shall be included in the construction quality assurance report including documentation of any failed test results, descriptions of the procedures used to correct the improperly installed material, and statements of all retesting performed in accordance with the Division approved plans.

~~(13)~~(14) Special engineering structures. Engineering structures incorporated in the design and necessary to comply with the requirements of this Section shall be specified in the engineering plan. Material, construction, and certification requirements necessary to ensure that the structure is constructed according to the design and acceptable engineering practices shall be included in the Division approved plan.

~~(14)~~(15) Sedimentation and erosion control. Adequate structures and measures shall be designed and maintained to manage the run-off generated by the 24-hour, 25-year storm event, and conform to the requirements of the Sedimentation Pollution Control Law (15A NCAC 4).

~~(15)~~(16) Construction quality assurance (CQA) report.

(A) A CQA report shall be submitted:

(i) After completing landfill construction in order to qualify the constructed MSWLF unit for a permit to operate;

(ii) After completing construction of the cap system in accordance with the requirements of Rule .1629 of this Section; and

(iii) According to the reporting schedule developed in accordance with Rule .1621 of this Section.

(B) The CQA report shall include, at a minimum, the information prepared in accordance with the requirements of Rule .1621 of this Section containing results of all construction quality assurance and construction quality control testing required in this Rule including documentation of any failed test results, descriptions of procedures used to correct the improperly installed material and results of all retesting performed. The CQA report shall contain as-built drawings noting any deviation from the approved engineering plans and shall also contain a comprehensive narrative including but not limited to daily reports from the project engineer and a series of color photographs of major project features.

(C) The CQA report shall bear the seal of the project engineer and a certification that construction was completed in accordance with:

(i) The CQA plan;

(ii) The conditions of the permit to construct;

(iii) The requirements of this Rule; and

(iv) Acceptable engineering practices.

(D) The Division shall review the CQA report within 30 days of a complete submittal to ensure that the report meets the requirements of this Subparagraph.

Table 1

CHEMICAL	MCL(mg/l
Arsenic	0.05
Barium	1.0
Benzene	0.005
Cadmium	0.01
Carbon Tetrachloride	0.005
Chromium (hexavalent)	0.05

2,4-Dichlorophenoxy acetic acid	0.1
1,4-Dichlorobenzene	0.075
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007
Endrin	0.0002
Fluoride	4
Lindane	0.004
Lead	0.05
Mercury	0.002
Methoxychlor	0.1
Nitrate	10.0
Selenium	0.01
Silver	0.05
Toxaphene	0.005
1,1,1-Trichloromethane	0.2
Trichloroethylene	0.005
2,4,5-Trichlorophenoxy acetic acid	0.01
Vinyl Chloride	0.002

History Note: *Authority G.S. 130A-294;*
Eff. October 9, 1993;
Temporary Amendment Eff. July 8, 1998.

*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting of June 18, 1998 pursuant to G.S. 150B-21.17(a)(1) and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules are published below when the rules have been approved by RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register. The rules published in full text are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

These rules unless otherwise noted, will become effective on the 31st legislative day of the 1998 Short Session of the General Assembly or a later date if specified by the agency unless a bill is introduced before the 31st legislative day that specifically disapproves the rule. If a bill to disapprove a rule is not ratified, the rule will become effective either on the day the bill receives an unfavorable final action or the day the General Assembly adjourns. Statutory reference: G.S. 150B-21.3.

APPROVED RULE CITATION				REGISTER CITATION TO THE NOTICE OF TEXT
10	NCAC	47B	.0102*	12:11 NCR 939
12	NCAC	07D	.0204*	12:08 NCR 622
12	NCAC	07D	.1106*	12:08 NCR 622
12	NCAC	10B	.0206*	12:18 NCR 1703
17	NCAC	06B	.3204	12:17 NCR 1610
17	NCAC	09L	.0105	12:17 NCR 1610
21	NCAC	14L	.0403	12:11 NCR 925
26	NCAC	01	.0102*	not required. G.S. 150B-21.5(b)(1)

TITLE 10 - DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHAPTER 47 - STATE/COUNTY SPECIAL ASSISTANCE FOR ADULTS

SUBCHAPTER 47B - ELIGIBILITY DETERMINATION

SECTION .0100 - APPLICATION PROCESS

.0102 INITIAL INTERVIEW

The applicant shall be allowed to have any person(s) of his choice participate in the interview. The eligibility specialist shall explain the eligibility requirements. The applicant shall be informed of the following:

(1) He must provide the name of collaterals, such as landlords, employers, and others with knowledge of his situation.

(2) It is the county's responsibility to use collateral sources to substantiate or verify information necessary to establish eligibility, except that, for an applicant moving to North Carolina to join a close relative (parent, grandparent, brother, sister, spouse, or child), the close relative must provide verification of his or her state residency to the county department of social services. Collateral sources of information include knowledgeable individuals, business organizations, public records, and documentary evidence. If the applicant does not wish necessary collateral contacts to be made, he can withdraw the application. If he denies permission to contact necessary collaterals, the application shall be rejected due to failure to cooperate in establishing eligibility.

(3) A worker will visit his home or the domiciliary care facility. The purpose of the visit is to verify eligibility requirements.

(4) The applicant has the right to:
   (a) Receive assistance if found eligible;
   (b) Be protected against discrimination on the ground of race, creed, or national origin by Title VI of the Civil Rights Act of 1964; He may appeal such discrimination;
   (c) Spend his assistance payment as he wishes, but it must be in his best interest and that of his family; A substitute payee may be appointed for those individuals who cannot manage the payment;
   (d) Receive his monthly check in advance until the payment is terminated by appropriate action;
   (e) Have any information given to the agency kept in confidence;
   (f) Appeal, if his assistance will be denied, changed or terminated; his payment is incorrect based on the county's interpretation of state regulations; or his request for a change in the amount of assistance was delayed beyond 30 days or rejected;
   (g) Reapply at any time, if found ineligible;
   (h) Withdraw from the assistance program at any time.

(5) The applicant's responsibilities. He must:
   (a) Provide the county department, state and federal officials the necessary sources from which the county department can locate and obtain information needed to determine

eligibility.

(b) Report to the county department of social services any change in situation that may affect eligibility for a check within five days after it happens. The meaning of fraud shall be explained. The applicant shall be informed that he may be suspected of fraud if he fails to report a change in situation and that in such situations, he may have to repay assistance received in error and that he may also be tried by the courts for fraud.

(c) Inform the county department of social services of any person or organization against whom he has a right to recovery. When he accepts medical assistance (included with all SA except CD), the applicant assigns his rights to third party insurance benefits to the state. He shall be informed that it is a misdemeanor to fail to disclose the identity of any person or organization against whom he has a right to recovery.

(d) Immediately report to the county department the receipt of a check which he knows to be erroneous, such as two checks for the same month, or a check in the wrong amount. If he does not report such payments, he may be required to repay any overpayment.

History Note: Authority G.S. 108A-41(b); 143B-153;
Eff. January 1, 1983;
Temporary Amendment Eff. October 28, 1997;
Amended Eff. April 1, 1999.

TITLE 12 - DEPARTMENT OF JUSTICE

CHAPTER 7 - PRIVATE PROTECTIVE SERVICES

SUBCHAPTER 7D - PRIVATE PROTECTIVE SERVICES BOARD

SECTION .0200 - LICENSES: TRAINEE PERMITS

.0204 DETERMINATION OF EXPERIENCE

(a) Experience requirements shall be determined in the following manner:

(1) one year experience = 1,000 hours;
(2) two years experience = 2,000 hours;
(3) three years experience = 3,000 hours.

(b) Applicants must be prepared to make available upon request written documentation to verify experience.

(c) When applying for a license, registration or trainee permit, the board shall not consider any experience claimed by the applicant if:

(1) gained by contracting private protective services to another person, firm, association or corporation while not in possession of a valid private protective services license; or

(2) gained when employed by a company contracting private protective services to another person, firm, association or corporation while the company is not in possession of a valid private protective services license.

The Board may consider formal classroom training which is directly related to the private protective services industry. The Board may grant one half hour of credit for each hour of formal training, but shall grant no more than two hundred hours. Paragraph (c) of this Rule is to be considered in addition to any other formal training credits. No credit shall be given for formal training required pursuant to these Rules.

History Note: Authority G.S. 74C-5; 74C-8;
Eff. June 1, 1984;
ARRC Objection October 19, 1988;
Amended Eff. April 1, 1999; February 1, 1996; March 1, 1989; December 1, 1985.

SECTION .1100 - TRAINING AND SUPERVISION FOR PRIVATE INVESTIGATOR ASSOCIATES

.1106 TIME LIMITS ON EXPERIENCE

(a) The Board will consider any practical experience gained within 10 years of the application date. The Board shall not consider experience claimed by the applicant if:

(1) gained by contracting private protective services to another person, firm, association, or corporation while not in possession of a valid private protective services license; or

(2) gained when employed by a company contracting private protective services to another person, firm, association, or corporation while the company is not in possession of a valid private protective services license

(b) The Board will consider any educational experience referred to in 12 NCAC 7D .1105.

History Note: Statutory Authority G.S. 74C-5(2);
Eff. July 1, 1994;
Amended Eff. April 1, 1999.

CHAPTER 10 - N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

SUBCHAPTER 10B - N.C. SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION

SECTION .0200 - ENFORCEMENT RULES

.0206 SUMMARY SUSPENSIONS: OR DENIALS

(a) The Commission may summarily suspend or deny the certification of a justice officer or instructor when, in the opinion of the Commission, the public health, safety, or welfare requires this emergency action of summary suspension or denial. The Commission has determined that the following conditions specifically affect the public health, safety, or welfare and

therefore it, by and through the Director, shall utilize summary suspension or denial following a full investigation of the matter when:

(1) the applicant for certification or the certified justice officer has committed or been convicted of a violation of the criminal code which would require a permanent revocation or denial of certification; or

(2) the justice officer has failed to comply with the training requirements of 12 NCAC 10B .0500 and .0600, and .1300; or

(3) the certified deputy sheriff or detention officer fails to satisfactorily complete the minimum in-service training requirements as prescribed in 12 NCAC 10B .2100; or

(4) the applicant for certification has refused to submit to the drug screen as required in 12 NCAC 10B .0301(6) or .0406(c)(3) or in connection with an application for or certification as a justice officer or a criminal justice officer as defined in 12 NCAC 9A .0103(6); or

(5) the applicant for certification or the certified officer has produced a positive result on any drug screen reported to the Commission as specified in 12 NCAC 10B .0410 or reported to any commission, agency, or board established to certify, pursuant to said commission, agency, or boards' standards, a person as a justice officer or a criminal justice officer as defined in 12 NCAC 9A .0103(6), unless the positive result is explained to the Commission's satisfaction.

(b) Without limiting the application of Chapter 17E of the General Statutes of North Carolina, a person who has had his or her certification summarily suspended or denied may not exercise the authority or perform the duties of a justice officer during the period of suspension or denial.

History Note: Authority G.S. 17E-8; 17E-9; 150B-3(c);
Eff. January 1, 1992;
Amended Eff. January 1, 1993;
Temporary Amended Eff. March 1, 1998;
Amended Eff. April 1, 1999; August 1, 1998.

TITLE 26 - OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 1 - GENERAL

SECTION .0100 - GENERAL

.0102 OFFICE HOURS: FILING OF DOCUMENTS

History Note: Authority G.S. 150B-11;
Eff. January 1, 1991;
Repealed Eff. July 1, 1998.

This Section contains the agenda for the next meeting of the Rules Review Commission on Thursday, August 20, 1998, 10:00 a.m., at 1307 Glenwood Ave., Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners by Monday, August 17, 1998, at 5:00 p.m. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate
Teresa L. Smallwood, Vice Chairman
Jim Funderburke
Vernice B. Howard
Philip O. Redwine
David Twiddy

Appointed by House
Paul Powell, Chairman
Anita White, 2nd Vice Chairman
Mark Garside
Steve Rader
George Robinson

RULES REVIEW COMMISSION MEETING DATES

July 23, 1998
August 20, 1998
September 17, 1998
October 15, 1998
November 19, 1998

MEETING DATE: AUGUST 20, 1998

LOG OF FILINGS

RULES SUBMITTED: JUNE 20, 1998 THROUGH JULY 20, 1998

AGENCY/DIVISION	RULE NAME	RULE CITATION	ACTION
DHHS/COMMISSION FOR MH/DD/SAS			
	Definitions	10 NCAC 45H .0201	Amend
JUSTICE/NC ALARM SYSTEMS LICENSING BOARD			
	Statement of Purpose	12 NCAC 11 .0501	Adopt
	Definitions	12 NCAC 11 .0502	Adopt
	Required CLE Hours	12 NCAC 11 .0503	Adopt
	Accreditation Standards	12 NCAC 11 .0504	Adopt
	Non-Resident Licensee	12 NCAC 11 .0505	Adopt
	Recording and Reporting CLE Credits	12 NCAC 11 .0506	Adopt
	Non-Compliance	12 NCAC 11 .0507	Adopt
EDUCATION, STATE BOARD OF			
	Hearings	16 NCAC 6C .0502	Amend
	Early Admission to Kingergarten	16 NCAC 6E .0105	Adopt
	Annual Performance Standards	16 NCAC 6G .0305	Amend
	Annual Performance Standards	16 NCAC 6G .0310	Adopt
	Liability Insurance	16 NCAC 6G .0501	Adopt
TRANSPORTATION, DEPARTMENT OF/DIVISION OF MOTOR VEHICLES			
	Original Application	19 NCAC 31 .0202	Amend
	Reneal Applications	19 NCAC 31 .0203	Amend
	Requirements	19 NCAC 31 .0501	Amend
	Original Application	19 NCAC 31 .0502	Amend

Renewal Application	19 NCAC 31 .0503	Amend
STATE BOARDS/DENTAL EXAMINERS, BOARD OF		
Definitions	21 NCAC 16V .0102	Amend
STATE BOARDS/REAL ESTATE COMMISSION, BOARD OF		
Proof of Licensure	21 NCAC 58A .0101	Amend

RULES REVIEW COMMISSION

July 23, 1998
MINUTES

The Rules Review Commission met on July 23, 1998, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners in attendance were Chairman Paul Powell, Teresa L. Smallwood, Vernice B. Howard, George S. Robinson, Jim R. Funderburk, Anita A. White, and Mark P. Garside.

Staff members present were: Joseph J. DeLuca, Staff Director; Bobby Bryan, Rules Review Specialist; Glenda B. Gruber, Administrative Assistant; and Sandy Webster.

The following people attended:

Valerie Chaffin	Hunton & Williams
Charlotte Hall	DHHS/MH/DD/SAS
Portia Rochelle	DHHS/DMA
Sharnese Ransome	DHHS/DSS
Patricia Purser	DHHS/DSB
David Brown	DENR
Dedra Alston	DENR
Ed Norman	DENR

APPROVAL OF MINUTES

The meeting was called to order at 10:05 a.m. with Chairman Powell presiding. He asked for any discussion, comments, or corrections concerning the minutes of the June 18, 1998 meeting. There being none, the minutes were approved.

FOLLOW-UP MATTERS

10 NCAC 14G .0102 - DHHS/Commission for MH/DD/SAS: The rewritten rule submitted by the agency was approved by the Commission.

10 NCAC 41A .0007 - DHHS/Social Services Commission: The rewritten rule submitted by the agency was approved by the Commission.

15A NCAC 10G .0404 - DENR/Wildlife Resources Commission: The rewritten rule submitted by the agency was approved by the Commission.

LOG OF FILINGS

Chairman Powell presided over the review of the log and all rules were approved with the following exceptions:

15A NCAC 7H .0310 - DENR/Coastal Resources Commission: This rule was withdrawn by the agency.

15A NCAC 18A .3101, .3102, .3105, .3108, and .3109 - DENR/Commission for Health Services: The Commission objected to .3101 due to ambiguity and lack of necessity. Because there is no authority for setting occupational standards for workers and supervisors, there is no need for the definitions in (1) and (2). It is also not clear what standards the Department will use in approving the one day courses and video instructions. In the last sentence in (7), it is not clear if a visual inspection must include one of the listed activities.

The Commission objected to .3102 due to lack of statutory authority. The last sentence in this rule is not consistent with G.S. 130A-131.7(12). As long as the lowest blood test shows a blood lead concentration of 15 - 19 micrograms per deciliter, it is irrelevant how high the others are. The Commission objected to .3105 due to ambiguity. In (b)(3), it is not clear what is meant by "properly" installed, established, and maintained. The Commission objected to .3108 due to lack of statutory authority and ambiguity. In (a), it is not clear what form and manner is prescribed for applications for certificates of compliance. In (c)(1), there is no authority for the Commission to set occupational requirements for workers and supervisors performing work to comply with the maintenance standard. In (c)(3), it is not clear what manner has been prescribed by the owner for the written summary. In (c)(4), it is not clear what standards the Department will use in approving laboratories or methods. In (e), it is not clear what manner is prescribed by the Department. The Commission objected to .3109 due to ambiguity and lack of necessity. In (e), it is not clear what method is approved by the Department. As written, the paragraph is meaningless since the Department sends the notice. Commissioner Rader voted not to approve the rules because they exceed their statutory authority in that they may arguably require demolition of a structure.

COMMISSION PROCEDURES AND OTHER MATTERS

Mr. DeLuca reported on his trip to Salt Lake City for the NASS/ACR (National Association of Secretaries of State/Administrative Codes and Registers). The next meeting will be on August 20, 1998.

The meeting adjourned at 10:55 a.m.

Respectfully submitted,
Sandy Webster

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge
JULIAN MANN, III

Senior Administrative Law Judge
FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Brenda B. Becton
Sammie Chess Jr.
Beecher R. Gray
Melissa Owens
Meg Scott Phipps
Robert Roosevelt Reilly Jr.
Dolores O. Smith

AGENCY	CASE NUMBER	ALJ	DATE OF DECISION	PUBLISHED DECISION REGISTER CITATION
ALCOHOLIC BEVERAGE CONTROL COMMISSION				
Alcoholic Beverage Control Commission v. Jesse Jacob Joyner, Jr	97 ABC 1438	Phipps	06/19/98	
Alcoholic Beverage Control Commission v. Axis Entertainment	98 ABC 0357*[3]	Reilly	07/02/98	
Sokha Huor Ramadneh v. Alcoholic Beverage Control Commission	98 ABC 0382	Smith	06/30/98	13:03 NCR 350
Alcoholic Beverage Control Commission v. Axis Entertainment	98 ABC 0401*[3]	Reilly	07/02/98	
Tarus Jackson v. Alcoholic Beverage Control Commission	98 ABC 0768	Smith	07/13/98	
CRIME CONTROL AND PUBLIC SAFETY				
Marcella Skaggs v. Crime Victims Compensation Commission	98 CPS 0065	Owens	06/05/98	
Talmadge E. McHenry v. Crime Victims Compensation Commission	98 CPS 0116	Gray	06/24/98	
Kenneth T. Lytle v. Crime Victims Compensation Commission	98 CPS 0176	Reilly	07/06/98	
Mia Thompson-Clark v. Crime Victims Compensation Commission	98 CPS 0349	Chess	05/14/98	
ENVIRONMENT AND NATURAL RESOURCES				
Ronald Prater v. Department of Environment and Natural Resources	97 EHR 0451	Reilly	07/02/98	
John M. Silvia v. Department of Environment and Natural Resources	97 EHR 1646	Chess	06/03/98	
Gregory B. Jackson, Brenda R. Jackson v. Greene Cty. Hlth. Dept., ENR	98 EHR 0042	Reilly	07/02/98	
Robert G. Goff, Sr. v. Department of Environment and Natural Resources	98 EHR 0072*[2]	Gray	06/25/98	
Scotland Water, Cedar Circle v. Environment and Natural Resources	98 EHR 0236	Smith	06/09/98	
Robert G. Goff, Sr. v. Department of Environment and Natural Resources	98 EHR 0448*[2]	Gray	06/25/98	
HEALTH AND HUMAN SERVICES				
Stanley C. Ochulo v. Off./Administrative Hearings, Mr. R. Marcus Lodge	98 DHR 0021	Reilly	06/24/98	
Oliver C. Johnson, Hazel T. Johnson v. Health and Human Services	98 DHR 0090	Gray	07/08/98	
Louise Streater v. Health and Human Services	98 DHR 0196	Gray	06/03/98	
Richard E. Lawrence, Rebecca A. Lawrence v. Health and Human Services	98 DHR 0209	Phipps	07/15/98	
Division of Facility Services				
Mooresville Hospital Mgmt. Associates, Inc. d/b/a Lake Norman Regional Medical Center v. DHR, Facility Services, Certificate of Need Section and Autumn Corporation and McKinley V. Jurney	97 DHR 1209	Reilly	06/23/98	
Constellation Health Services, Inc. and Constellation Senior Services, Inc. v. DHR, Facility Services, Group Care Licensure Section and Diversified Health Group, L.L.C. and The Innovative Health Group, Inc.	97 DHR 1529	Gray	06/24/98	
Sunlite Retirement Home, Winnie Jane Johnson v. DHR, Facility Services	98 DHR 0124	Phipps	06/11/98	
Ann Davis Rest Home v. Group Care Licensure Section	98 DHR 0197	Phipps	06/23/98	

AGENCY	CASE NUMBER	ALJ	DATE OF DECISION	PUBLISHED DECISION REGISTER CITATION
Diane Lingard v DHR, Facility Svcs, Health Care Personnel Reg.	98 DHR 0214	Becton	06/22/98	
Kimberly Annette Smith Hull v DHHS, Division of Facility Services	98 DHR 0239	Phipps	06/23/98	
Deborah Ann Holt v DHHS, Division of Facility Services	98 DHR 0348	Phipps	06/22/98	
Johnnie E. Williams v DHHS, Division of Facility Services	98 DHR 0639	Reilly	07/02/98	
Division of Medical Assistance				
Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas Medical Ctr, and Harry Mahannah, M.D v DHHS, Division of Medical Assistance	97 DHR 0621	Smith	07/08/98	
Division of Social Services				
William & Crystal Steakley v. DHHS, Division of Social Services	98 DHR 0076	Gray	07/20/98	
Child Support Enforcement Section				
Jeffery Lee Graves v Department of Human Resources	98 CRA 0137	Becton	06/23/98	
Donald L. Carr, Jr. v Department of Human Resources	98 CRA 0545	Reilly	06/08/98	
Marvin Diggs v Department of Human Resources	98 CRA 0588	Reilly	06/24/98	
Dennis Lee McNeill v. Department of Human Resources	96 CSE 1305	Gray	06/22/98	
Byron O Ashby II v Department of Human Resources	96 CSE 1435	Mann	07/15/98	
Billy Anthony Jr v Department of Human Resources	97 CSE 1393	Reilly	06/24/98	
Alton D Bagley v Department of Human Resources	97 CSE 1424	Chess	06/02/98	
Bernel B. Berry Jr v Department of Human Resources	97 CSE 1435	Smith	06/12/98	
Anthony Montgomery v. Department of Human Resources	97 CSE 1442	Phipps	06/17/98	
Terry Letterman v Department of Human Resources	97 CSE 1492	Smith	06/22/98	
Paul J Mobley, Jr v Department of Human Resources	97 CSE 1568	Phipps	06/17/98	
Robert A. Sherer v. Department of Human Resources	97 CSE 1605	Mann	07/15/98	
Wade A Burgess v. Department of Human Resources	98 CSE 0071	Morrison	06/12/98	
Robert L. Robinson v Department of Human Resources	98 CSE 0130	Reilly	07/15/98	
Jamie A. Hurtt v Department of Health & Human Services	98 CSE 0307	Morrison	07/06/98	
Renardo Jenkins v Department of Human Resources	98 CSE 0310	Smith	06/23/98	
Anthony Love v Department of Human Resources	98 CSE 0312	Phipps	06/23/98	
Steven Kent Gold v Department of Human Resources	98 CSE 0333	Morrison	07/01/98	
Leroy J Poole v Department of Human Resources	98 CSE 0375	Reilly	07/02/98	
Michael Bernard Hill v. Department of Health & Human Services	98 CSE 0421	Becton	07/15/98	
Charlie Ratliff Jr v Department of Health & Human Services	98 CSE 0449	Mann	07/15/98	
Tabatha D. Pate v Department of Human Resources	98 CSE 0556	Becton	06/23/98	
Charlie Gray Hunt Jr. v. Department of Human Resources	98 CSE 0607	Smith	06/22/98	
Robert L. Williams v Department of Human Resources	98 CSE 0682	Smith	06/22/98	
Elijah G Deans v. Department of Health & Human Services	98 CSE 0867	Phipps	07/20/98	
Vickie E. Lane v Michael L. Adams, Department of Human Resources	96 DCS 2105	Gray	07/08/98	
Barbara Fanta-Blandine v Department of Human Resources	97 DCS 1486	Morrison	06/22/98	
Terita M. Sharpe v Department of Human Resources	98 DCS 0468	Morrison	06/09/98	
Ruth McFadden v Department of Human Resources	98 DCS 0675	Reilly	07/15/98	
Division of Women's and Children's Health				
Joseph A Nawas v DHHS, Women's/Children's Health, Nutrition Svcs	98 DHR 0637	Phipps	07/02/98	
JUSTICE				
Alarm Systems Licensing Board				
Claude David Huggins v. Alarm Systems Licensing Board	98 DOJ 0871	Morrison	07/09/98	
Education and Training Standards Division				
Odis Fitzgerald Darden v Sheriffs' Education & Training Standards Comm	97 DOJ 1698	Reilly	06/12/98	
Hearl Oxendine v Criminal Justice Education & Training Stds Comm	98 DOJ 0121	Smith	06/22/98	
Daryl LaMar Bryant v Sheriffs' Education & Training Standards Comm	98 DOJ 0430	Gray	07/21/98	
William Scott Key v Sheriffs' Education & Training Standards Comm.	98 DOJ 0432	Becton	06/08/98	
Paul Harvey Taylor v DOJ, Criminal Justice Ed & Training Stds Comm	98 DOJ 0841	Phipps	07/10/98	
STATE PERSONNEL				
Department of Correction				
Terry T Rees v Department of Correction	97 OSP 1671*[1]	Smith	06/30/98	
Leon Owens v Department of Correction	98 OSP 0050	Becton	07/10/98	
Terry T Rees v Department of Correction	98 OSP 0119*[1]	Smith	06/30/98	
Carl W Craven, II v Pender Correctional Institution	98 OSP 0633	Smith	06/25/98	
Crime Control and Public Safety				
Roger D Davis v Crime Control & Public Safety, St Hwy Patrol	97 OSP 0617	Chess	05/27/98	

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Employment Security Commission				
Jane B Bolin and Arlene G Sellers v Employment Security Commission	97 OSP 1122*[1]	Chess	06/02/98	
Jane B Bolin and Arlene G Sellers v Employment Security Commission	97 OSP 1134*[1]	Chess	06/02/98	
Environment and Natural Resources				
Charles Anthony Bruce v ENR, Division of Parks and Recreation	98 OSP 0240	Reilly	06/08/98	
Health and Human Services				
Angela M Miles v Cumberland County Department of Social Services	97 OSP 0613*[5]	Gray	07/10/98	
Charity Swick v Cumberland County Department of Social Services	97 OSP 0775	Gray	07/10/98	
Ruth Holroyd v Montgomery Cty DSS, Children's Services	97 OSP 1586	Smith	05/27/98	13:02 NCR 257
Angela M Miles v Cumberland County Department of Social Services	98 OSP 0084*[5]	Gray	07/10/98	
Delores Laverne Rich v Health & Human Services, Dorothea Dix Hosp	98 OSP 0120	Gray	07/08/98	
Anthony M Ruiz v Department of Health & Human Svcs, Youth Svcs	98 OSP 0454	Gray	06/04/98	
Secretary of State				
Jonathan M Demers v Department of Secretary of State	97 OSP 1018	Becton	07/07/98	13:03 NCR 343
Department of Transportation				
Larry W Davis v Department of Transportation	98 OSP 0241	Gray	07/08/98	
University of North Carolina				
Douglas Love, Jr v UNC Hospitals	97 OSP 0662	Reilly	06/08/98	
Deborah J Fenner v NC Central University	97 OSP 0902	Chess	05/29/98	
Joyce M Smith v North Carolina Central University	97 OSP 1297	Smith	06/25/98	
Jonathan L Fann v North Carolina State University Physical Plant	98 OSP 0465	Becton	07/17/98	
STATE TREASURER				
Hugh A Wells v Consolidated Judicial Retirement System of NC; Bd of Trustees Teachers and State Employees' Retirement System	98 DST 0316	Morrison	06/05/98	13:01 NCR 166
TRANSPORTATION				
David Warren Dew et al v Motor Vehicles, Alexander Killens Comm	95 DOT 1144	Gray	06/04/98	
UNIVERSITY OF NORTH CAROLINA				
Ladonna P James v UNC Hospitals	98 UNC 0591	Becton	07/20/98	

* Consolidated Cases.

STATE OF NORTH CAROLINA **COUNTY OF WAKE**	**IN THE OFFICE OF ADMINISTRATIVE HEARINGS 97 OSP 1018**
JONATHAN M. DEMERS, **Petitioner,** **v.** **DEPARTMENT OF SECRETARY OF STATE,** **Respondent.**	**RECOMMENDED DECISION**

This matter was heard by Administrative Law Judge Brenda B. Becton in Raleigh, North Carolina on March 5-6, 1998.

APPEARANCES

Petitioner: David S Crump, Attorney At Law, Raleigh, North Carolina

Respondent: Marian Hill Bergdolt, Associate Attorney General, N.C. Department of Justice, Raleigh, North Carolina

ISSUES

1. Was the Reduction in Force ("RIF") of Petitioner's Administrative Assistant II position with Respondent's office substantially motivated by retaliation or political affiliation discrimination when the majority of Petitioner's job duties were eliminated when federal legislation was passed which eliminated individual state review of certain securities filings?

2. Were Petitioner's priority re-employment rights violated by Respondent during the twelve-month priority re-employment period?

WITNESSES

The following individuals testified for Petitioner: Petitioner, Charles Malone, Eugene Bruton, Donald Roberts, Perry Boseman, Edward G. Carr, Jr., John Curry, Susan Smiley, and Joyce Weathersby.

The following individuals testified for Respondent: Eugene J. Cella, Edward G. Carr, Jr., and Joyce Weathersby.

EXHIBITS

The following proposed exhibits submitted by Petitioner were actually admitted into evidence at the hearing:
Exhibit 1, Memo from Ed Carr to Jonathan Demers dated December 4, 1996;
Exhibit 2, Memo from Ed Carr to Jonathan Demers Regarding DCI Grievance;
Exhibit 3, Memo from Jonathan Demers Regarding DCI Grievance;
Exhibit 4, Memo from Ed Carr to Jonathan Demers Regarding DCI Grievance;
Exhibit 5, August 6, 1996 - Memo to Perry Boseman from Jonathan Demers;
Exhibit 6, August 9, 1996 - Memo to Whom It May Concern from Jonathan Demers;
Exhibit 7, August 8, 1996 - Memo to Jonathan Demers from Perry Boseman;
Exhibit 8, Exhibit 9, Application for Employment;
Exhibit 10, Letter to Jonathan Demers from Eugene Cella dated October 29, 1996;
Exhibit 11A, Application for Employment;
Exhibit 11B, Memo from Eugene Cella to Jonathan Demers dated October 29, 1996;
Exhibit 12, Application for employment.

The following proposed exhibits submitted by Respondent were actually admitted into evidence at the hearing:
Exhibit B, Letter from Office of State Personnel to Clyde Smith with Reduction in Force Plan attached;
Exhibit C, Jonathan Demers' Work Plan.

Based upon the official documents in the file, sworn testimony of the witnesses, and other competent and admissible evidence, the undersigned makes the following:

FINDINGS OF FACT

1. Petitioner was employed with Respondent in its securities division as a securities examiner from October 1991 to November 30, 1996. His position was classified as an Administrative Assistant II. T vol II, p. 63; Prehearing Order Stipulation 1.

2. Petitioner's main job duties in his position were to review and analyze non-profit and mutual fund offering documents to establish compliance with the North Carolina General Statutes. This required knowledge of securities laws and that Petitioner review and independently determine if the filings met the requirements of the law. T vol II, pp. 21-22, 152-155; Respondent's Exhibit C.

3. The National Securities Markets Improvements Act of 1996 ("NSMIA") was passed in the later part of 1996. Under NSMIA, states are prohibited from reviewing and analyzing non-profit and mutual fund offering documents that meet standards established under federal securities law. After the passage of NSMIA, mutual fund and non-profits filings became notice filings at the state level. No independent review of the filings is completed by states. T vol I, p. 186; T vol II, pp. 7, 22, 158-159.

4. The main, non-clerical, job duties performed by Petitioner were eliminated upon the passage of NSMIA. Since the passage of NSMIA, the employees responsible for handling the notice filings are in data-entry or clerical positions with a lower salary or pay grade than that held by Petitioner. T vol II, pp. 7-8, 61, 159.

5. Prior to the passage of NSMIA, Respondent was aware that Congress was considering passing a law that would eliminate individual states' review of some filings. As a result, meetings were held with employees of the securities division prior to the passage of NSMIA informing them that reductions in force were possible if federal legislation, such as NSMIA, was passed. In addition, Ed Carr, Respondent's Deputy Secretary of State and Personnel Director, met with Petitioner a number of times to inform him that his position would probably be eliminated if the Act passed, so that he would not be surprised. T vol I, pp. 108-109; T vol II, pp. 102-103, 155-157.

6. Two positions in the securities division were eliminated as a result of the passage of NSMIA, Petitioner's position and a position held by Gene Bruton. The position held by Mr. Bruton was also one that involved the review and analysis of securities filings or private placement documents. Approximately 60% of Mr. Bruton's job duties were eliminated by NSMIA. T vol I, pp. 184-186; T vol II, pp. 156.

7. Prior to the passage of NSMIA and during the period when the legislation was pending, Perry Boseman, Petitioner's supervisor, discussed the legislation with Petitioner and told Petitioner that he ought to learn how to handle different types of securities filings, those that were not the subject of the proposed legislation. T vol II, p. 106-107.

8. The decision to eliminate Petitioner's securities enforcement position was made by Secretary of State Janice H. Faulkner after she had discussed alternatives with Mr. Cella, Petitioner's immediate supervisor, and others. T vol II, pp. 156, 202-204, 206-208.

9. Petitioner was informed that his position was being eliminated and of his priority re-employment rights in a October 29, 1996, letter from Mr. Cella and at a meeting held with Mr. Carr. In addition, Respondent completed the priority re-employment application for Petitioner. T vol I, pp. 111-112, 126-127, 129-130, 189-191; Petitioner's Exhibit 10.

10. Respondent had a Reduction in Force Plan (or Guidelines) that it had adopted in 1985 and which was on file with the Office of State Personnel. The Plan focuses on reductions in force occurring as a result of budget cuts rather than the elimination of a specific employee's job duties. Therefore, the Plan focuses on steps to take when a loss of funding results in the need to eliminate positions. Some of the Plan's requirements are not necessarily applicable to the type of RIF that occurred in this case. However, as required in the Plan, Respondent did the following:

    A. Respondent considered alternatives in making the decision to eliminate Petitioner's position. It was determined that it was the least disruptive to eliminate Petitioner's position, since the skills required by the person holding Petitioner's position were no longer required. Furthermore, at the time of the RIF, Respondent did not have an available position in its Securities Division for someone with Petitioner's skills and qualifications.

B. Through various meetings, employees that might have been subject to a reduction in force as a result of the passage of NSMIA were notified as soon as possible that their positions might potentially be eliminated. Then, once NSMIA was adopted, Petitioner was given notice of the elimination of the position very soon after the decision was made.

C. Petitioner was given written notice of the RIF decision in a letter from Mr. Cella dated October 29, 1996. The letter provided the basis for the decision and informed Petitioner that if he wished to appeal the RIF, he should "see Ed Carr for an explanation of [his] rights and written information on the appeal process."

D. On October 29, 1996, Petitioner met with Mr. Carr. In that meeting, Petitioner was advised of his priority re-employment rights, appeal rights, and his eligibility for any other services or benefits.

T vol I, pp. 53, 111-114, 126-128, 130-131, 189-191; T vol II, pp. 108-111, 155-158, 160, 206-208; Petitioner's Exhibit 10; Respondent's Exhibit B.

11. The Office of State Personnel's RIF Office maintains an automated referral system. Every month the RIF Office sends state agencies a priority re-employment inventory which lists job classification titles and the number of priority applicants they have in their system for those titles. When an agency has a vacancy, it is required to check that inventory. If the classification title for the vacancy is on the register, the agency is then required to order the priority re-employment register from the Office of State Personnel. The agency is then required to review priority re-employment applications, and if a priority re-employment applicant meets the minimum qualifications for the vacancy, they are required to give that candidate an interview. They are also required to offer the position to qualified priority re-employment applicants over applicants who are not currently state employees.

12. Petitioner was provided with at least thirty days written notice of the RIF and placed on administrative leave for the purpose of commencing his job search during the thirty-day period. Petitioner was officially informed of the RIF on October 29, 1996, and received his salary and benefits through November 30, 1996. Initially, Respondent tried to figure out a method for paying both Petitioner and Mr. Bruton through January, as a result of concerns raised by Mr. Bruton regarding health insurance coverage. However, Respondent determined, through conversations with the Office of State Personnel, that this could not be done, and paid Petitioner only for thirty days after notice of the RIF, or through November 30, 1996. T vol I, pp. 116-118, 189-191; Prehearing, Order Stipulations (a) and (c).

13. In 1995, Respondent was audited by the SBI and State Auditor's office. The written reports from the audits eventually caused the then Secretary of State, Rufus Edmisten, to resign. Prior to the audits, and Secretary Edmisten's resignation, the office had a number of employees that worked on "Special Projects." Special Projects tended to be personal work for Secretary Edmisten and included driving Secretary Edmisten to various events and performing other duties for him. Employees who performed Special Projects were not required to perform their regular job duties while they worked on the Special Projects. In addition, these employees were granted some favoritism by Secretary Edmisten. Petitioner was a member of Secretary Edmisten's Special Projects Team, which was called the Secret Squirrel Squad. Eventually, Petitioner was taken off of the Special Projects Team, allegedly because he spoke to members of the press during the audit period. T vol I, p. 161; T vol II, pp. 14-15, 46-47, 76, 79-80, 130, 166-167, 188-189.

14. At the time that Petitioner was hired, and throughout his tenure in the Edmisten administration, Mr. Cella and Mr. Boseman had very little supervisory power over individuals such as the Petitioner who were involved with the "special projects" or "Secret Squirrel" activities that took place. Such individuals were tasked to the "special projects" by members of Respondent's management directly, without necessarily going through the official chain of command.

15. Members of the Special Projects Team often bypassed their direct supervisors and spoke directly to Secretary Edmisten if they had an issue that they wanted to raise. For example, when the Secretary of State's office relocated, Petitioner, as all other Administrative Assistant II employees, did not have an office in the new building. He went directly to Secretary Edmisten to complain about this and eventually an office was created for him. T vol. II, pp. 167-168, 182-183, 197.

16. The audits found a number of abuses in Secretary Edmisten's administration, including the Special Projects. After the audits, under Secretary Edmisten and after Secretary Edmisten's resignation under Secretary Faulkner, the interim Secretary of State who was appointed to replace Secretary Edmisten, steps were taken to respond to the issues raised in the audits, which required the implementation, for the first time, of standard policies and procedures. For example, employees were required to document reimbursable expenses, designate the hours worked, and could be terminated for making misrepresentations on employment applications. In addition, employees were no longer allowed to circumvent the chain of command and were

required to raise issues with their supervisors, instead of appealing directly to the Secretary. Secretary Faulkner also implemented some new policies. For example, after problems arose when employees called radio talk shows to discuss issues raised in the audits, disrupting the work day, Secretary Faulkner required employees to leave their doors open and turn off their radios. Secretary Faulkner also took away the law enforcement powers of Securities Investigators as a result of abuses in power revealed in the audits. The changes resulting from the audits were difficult for some employees that had worked under Secretary Edmisten, including Petitioner, to accept. T vol I, pp. 75-76, 87-90, 93-94, 158, 165-166, 176; T vol II, pp. 23-25, 81, 83-84, 95, 172-174.

17. After Secretary Faulkner took office, Eugene Cella became her Chief of Staff.

18. Petitioner was active in the audit process, as were most, if not all Respondent's employees. He participated in a number of interviews with both the Auditors' office and SBI. He also spoke to the press and a number of organizations about his activities as a member of the Special Projects Team, once the audits became public. T Vol II, pp. 14, 16-17, 77-78, 84-86, 92, 94-95, 168-169, 185, 187.

19. Petitioner established that his name was processed on the Division of Criminal Information ("DCI") terminal by Mr. Cella who was a certified DCI operator. An audit was completed by DCI regarding Mr. Cella's use of the DCI terminal. The audit was completed after John Curry, the employee that discovered the DCI checks on Petitioner, contacted DCI about the checks. A final report regarding the appropriateness of the use of the DCI equipment by Mr. Cella was never completed, nor conveyed to Mr. Cella. T vol I, pp. 70-71, 73-74, 79-81, 143-150, 153; T vol II, pp. 160, 162-163.

20. Mr. Cella completed the DCI checks, with Secretary Faulkner's approval, because (a) Petitioner sometimes worked in the securities enforcement area; (b) Petitioner had failed to complete the criminal history portion of a second Application for Employment; and (c) it was discovered that Petitioner had misrepresented the extent of his college education in his initial Application for Employment. [1] In that application, Petitioner stated that he had completed 12 semester hours at NC State University. In fact, Petitioner only attended one meeting of one class at NC State University. Another application was required because it was revealed during the Auditors' audit that a number of Respondent's employees had incomplete employment applications. In correcting matters raised in the audit, employees with incomplete applications were asked to complete second applications. Petitioner had a difficult time completing the second application. The employees were given one week to complete their applications. All employees complied with this deadline, except Petitioner. It took Petitioner over a month to complete his application. Even then, the criminal history section of the application was incomplete (this section was also not complete in the application that Respondent considered as Petitioner's initial application) and other information was omitted. T vol II, pp. 126-127, 161-163, 180; Petitioner's Exhibits 10 and 11-B; Prehearing Order Stipulation (f).

21. Petitioner filed a written grievance as a result of the DCI checks. In the grievance, Petitioner asked about the appropriateness of the checks. Eventually, Respondent determined that the issue was not a grievable one under N.C. Gen. Stat. §126-34.1 and related regulations. Respondent suggested that the issue should be raised with DCI, since that agency controls the use of its equipment. Petitioner did not take any action to appeal the determination that the issue was not grievable by filing a contested case petition with the Office of Administrative Hearings, or otherwise. T vol I, pp. 121-123; T vol II, pp. 70-75; Petitioner's Exhibit 2, 3, 4, 5, 6 and 7.

22. Petitioner supported Richard Petty in his bid for the Secretary of State's office. Petitioner had a bumper sticker on his car indicating his support for Mr. Petty -- and spoke about it within the office. T vol II, p. 123.

23. From November 1996 until the date of the hearing, there have been at least 26 vacancies in the Department of the Secretary of State. The Respondent did not call Petitioner regarding any of those 26 vacancies. Except for one of the 26 vacancies, there is no evidence in the record about whether the Petitioner was minimally qualified for any of the positions. T vol I, p.52; T vol II, pp.120-121.

24. The Office of State Personnel notified the Petitioner about a Notaries position with the Respondent. T vol II, p.121.

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[1] Petitioner contends that the application that was produced as his initial application was in fact his second application. The produced application is a handwritten application that Petitioner alleges was completed in a hurry right before his interview for the securities examiner position. Petitioner claims that his first application was a typed application which Respondent misplaced. Petitioner also claims that he was asked to complete other applications, none of which were produced. T vol II, pp. 64-66, 135.

25. Petitioner applied for the Notaries position. The Notaries position is the only position with Respondent that he applied for during his twelve-month priority re-employment period (from November 1996 through October 1997). He was granted an interview for the position. No information was provided that would establish that this position had ever been filled. T vol II, pp. 121-122.

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter pursuant to Chapter 126 and Chapter 150B of the North Carolina General Statutes and has the authority to issue a recommended decision to the State Personnel Commission ("SPC") which shall make the final decision.

The Reduction in Force Decision

2. Neither the Secretary of State's RIF Plan nor law requires that a current employee's services be terminated upon a decision to abolish his or her position as the result of a decision to implement a reduction in force. However, an employer is not required to create a new position in order to refrain from RIFing an employee whose position has been eliminated.

3. The law and administrative rules require that certain procedural requirements be met before a position can be eliminated through a reduction in force. An employee must be informed of the RIF as soon as is practicable. Information regarding the employee's priority re-employment rights must be provided to the employee. Thirty days notice of the separation must be given prior to the RIF. Finally, if the employee wants priority re-employment consideration, the employer must submit an application on the employee's behalf to the Office of State Personnel requesting priority consideration. N.C. Gen. Stat. §126-7.1, N.C. Administrative Code, Title 25, Articles 1 D.0504 and 1 D.0515.

4. These requirements were met by Respondent in eliminating the Securities Examiner position. For example:

A. Respondent informed Petitioner of the RIF as soon as practicable. Petitioner was informed through the employee meetings that his position could be eliminated if NSMIA was passed prior to its passage. The decision to eliminate Petitioner's position was conveyed to Petitioner very soon after the passage of NSMIA.

B. Petitioner was informed of his priority re-employment rights in the October 29, 1996, meeting with Mr. Carr. In addition, Respondent assisted in the completion of the priority re-employment application.

C. Petitioner was given thirty days notice of the RIF. He was notified of the RIF on October 31, 1996, and received his salary and accrued all benefits through November 30, 1996.

5. Respondent's RIF Guidelines provide that "[s]epartion of employees through reduction in force shall occur only after every feasible alternative has been exhausted." After the primary functions of Petitioner's position were eliminated by NSMIA, what remained were essentially clerical functions. There is no evidence that there was another position available that Petitioner could have filled. There is no evidence that Petitioner was capable of performing other different duties in the Securities Division. Even if Petitioner was able to perform other job functions in the Securities Division, Respondent was not obligated to create another position to replace the position that was eliminated.

Retaliation Claim

6. Under North Carolina law, a State employee cannot be discharged, threatened or otherwise discriminated against because the employee reports any activities of "a State agency or State employee constituting:

(1) A violation of State or federal law, rule or regulation;
(2) Fraud;
(3) Misappropriation of State resources; or
(4) Substantial and specific danger to the public health and safety."

N.C. Gen. Stat. §126-84 (1997).

7. A prima facie case of retaliation because of a reported activity is established by showing the following elements: (A) evidence of participation in a protected activity; (B) followed by an adverse employment activity; and (C) establishment that the protected activity was a substantial or motivating factor in causing the adverse action. *Hanton v. Gilbert*, '126 N.C. App.

561, 571, 486 S.E.2d 432, 439 (1997).

8. Jurisdiction for retaliation claims brought under N.C. Gen. Stat. §126-84 lies in our superior courts. However, to the extent that the Petitioner claims that a retaliatory motive tainted the reduction in force process, the undersigned will address the issues raised by the evidence presented at the hearing.

9. Petitioner has failed to establish a prima facie case of retaliation under N.C. Gen. Stat. §126-84 for reporting the DCI checks that were run on him. No evidence was presented that Petitioner engaged in a protected activity, and no evidence was presented that established that the DCI checks violated State or federal law, rules or regulations, since Mr. Cella was a certified DCI operator at the time that the checks were run and Petitioner had failed to answer the criminal history section of his employment applications and misrepresented the extent of his college education. Therefore, Mr. Cella had a legitimate purpose for running the checks. In addition, no evidence was presented that would establish that the reporting of the DCI checks was a substantial or motivating factor in the decision to RIF the position. The decision to RIF the position was made as a result of the passage of that act had on Petitioner's job duties.

10. In addition, Petitioner failed to establish a prima facie case of retaliation under N.C. Gen. Stat. §126-84 for Petitioner's participation in the 1995 SBI and Auditor's office audits of Respondent. The evidence presented by Petitioner related to these allegations, show that Petitioner performed tasks during Secretary Edmisten's administration that were later determined to be improper. No evidence was presented that would establish specific information that Petitioner revealed to the auditors, to even determine if the information was protected. In addition, no evidence was presented that would establish that Petitioner's participation in the audits was a factor in the decision to RIF his securities examiner position.

Political Discrimination

11. In regards to the Political Discrimination claim, federal decisions are referred to for guidance in establishing evidentiary standards and principles of law to be followed in State discrimination cases. *Dep't of Correction v. Gibson*, 308 N.C. 131, 136, 301 S.E.2d 78, 82 (1983). Under federal law, in order to establish a prima facie case of political affiliation discrimination, Petitioner must show that his political affiliation was the substantial and motivating factor in making the RIF decision. *Branti v. Finkel*, 445 U.S. 507 (1980).

12. Petitioner presented no evidence that would establish that his support for Mr. Petty in his bid for the Secretary of State position affected or influenced Respondent in any manner in making the decision to RIF his securities examiner position. The substantial or motivating factor in making the decision to eliminate the securities examiner position was the adoption of NSMIA and the effect that its adoption had on Petitioner's legitimate job duties.

Priority Re-employment Rights

13. The law and related regulations grant RIF employees priority re-employment rights. Under the law, if a RIF employee applies for a State position that would be a promotion from his or her RIF position and has substantially equal qualifications as an applicant that is not a State employee, the RIF employee is to be considered over the non-State employee. If the RIF employee applies for a State position that is equal or lower to the salary grade of the position eliminated by the RIF and is determined to be qualified for the position, the employee shall receive priority consideration over all applicants that are not State employees. No priority rights exist if all applicants for the position are State employees, unless the RIFed employee has more than 10 years of state service and the other State employee has less than 10 years of state service. The RIFed employee shall receive equal consideration among State employees. The priority re-employment rights extend for twelve months from the date that the employee is notified of the RIF. N.C. Gen. Stat. §126-7.1 (1997).

14. The North Carolina Administrative Rules do not require that either the Respondent or the Office of State Personnel notify the Petitioner about every job vacancy that occurs during his one year priority re-employment status.

15. Petitioner did not establish that his priority re-employment rights were violated. There was no evidence presented that Petitioner had ten years or more of State service which would have given him priority over any State employees with less than ten years of State Service. Petitioner presented evidence that he applied and interviewed for one position with the Secretary of State's office during the priority re-employment period (from October 1996 through October 1997). However, no evidence was presented that would establish: (a) Petitioner's salary grade (or the grade of the securities examiner position), (b) the salary grade of the position applied for, (c) whether any applicants were not State employees, (d) that the position was filled by an individual that was not a State employee, (e) that Petitioner was qualified for the position, or (f) that the position was filled. In addition, no evidence, such as that which was just enumerated, was presented regarding any other

positions that were available with Respondent during the priority re-employment period.

RECOMMENDED DECISION

It is recommended that the State Personnel Commission:

A. Affirm, Respondent's decision to eliminate Petitioner's securities examiner position through a RIF as proper procedures were followed by Respondent in eliminating the position and Petitioner's retaliation and political discrimination claims are unfounded;

B. Dismiss Petitioner's claims regarding priority re-employment rights as no evidence was presented that would establish that his priority re-employment rights were violated by Respondent.

ORDER

It is ordered that the agency, serve a copy of the Final Decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, NC 27611-7447, in accordance with N.C. Gen. Stat. § 150B-36(b).

NOTICE

Before the agency makes the FINAL DECISION, it is required by N.C. Gen. Stat. §150B-36(a) that the agency give each party an opportunity to file exceptions to this RECOMMENDED DECISION, and to present written arguments to those in the agency who will make the final decision.

The agency is required by N.C. Gen. Stat. §150B-36(b) to serve a copy of the FINAL DECISION on all parties and to furnish a copy to the parties' attorneys of record.

This the 6th day of July, 1998.

Brenda B. Becton,
Administrative Law Judge

STATE OF NORTH CAROLINA	**IN THE OFFICE OF ADMINISTRATIVE HEARINGS**
COUNTY OF MECKLENBURG	**98 ABC 0382**

SOKHA HUOR RAMADNEH d/b/a TIC TOC GROCERY **Petitioner,**	)	
v.	)	**RECOMMENDED DECISION**
N.C. ABC COMMISSION AND NATURAL RESOURCES, DIVISION OF MATERNAL AND CHILD HEALTH, NUTRITION SERVICES SECTION **Respondent.**	)	

This matter came on for hearing on June 2, 1998 before Administrative Law Judge Dolores O. Smith in Charlotte, North Carolina.

APPEARANCES

Petitioner: J. Jerome Miller
Attorney at Law
723 S. Sharon Amity Road
Charlotte, North Carolina 28211
Attorney for Petitioner

Respondent: LoRita Pinnix
Assistant Counsel
N.C. ABC Commission
P.O. Box 26687
Raleigh, North Carolina 27611-6687
Attorney for Respondent

ISSUE

1. Did the Respondent err in rejecting the Petitioner's application for off-premises malt beverage permit and unfortified and fortified wine permits, based on the location being not a suitable place to hold ABC permits in that it is located within 50 feet of a church?

STATUTE AND RULES IN ISSUE

N.C. Gen. Stat. 18B-901(c)(5)

Based upon careful consideration of the testimony and evidence presented at the hearing, the documents and exhibits received into evidence, and the entire record in this proceeding, the undersigned makes the following:

FINDINGS OF FACT

1. On June 11, 1997, Petitioner purchased a business known as Tic Toc Grocery in Charlotte, North Carolina from Paul Williams who had owned and operated a store at that location for approximately 25 years.

2. A grocery/convenience store has been located at that site since the early 1930s.

3. During the time Mr. Williams owned and operated the store he held an off-premise malt beverage permit and unfortified and fortified wine permits.

4. When Petitioner purchased the store he was given a temporary permit.

5. On or about February 11, 1998, the Petitioner purchased the real estate on which the store is located for the sum of $65,000.

6. The Petitioner applied for permanent ABC permits and ALE Agent Nicole Gabriel was assigned to do the background check for the application.

7. Agent Gabriel visited the site and noticed that the store was close to a church, the Church of God Holiness.

8. The store faced one street and the church faced another but the backs of the buildings were close to each other.

9. The back and side of the store as well as the side of the church are grassy areas which are accessible from the street.

10. Agent Gabriel measured the distance with a rolling measuring device and determined that the distance between the back of the grocery store and the side/back of the church was approximately 37 feet.

11. N.C. Gen. Stat. 18B-901(c)(5) provides:

> (c) Factors in Issuing Permit. - Before issuing a permit, the Commission shall be satisfied that the applicant is a suitable person to hold an ABC permit and that the location is a suitable place to hold the permit for which he has applied. To be a suitable place, the establishment shall comply with all applicable building and fire codes. Other factors the Commission shall consider in determining whether the applicant and the business location are suitable are:
>
> (5) Whether the establishment is located within 50 feet of a church or public school or church school;

12. The statute is silent as to whether the 50 feet distance should be measured from the front doors or from any other particular part of the building.

13. Subsequently, members of the church were asked whether or not they had objections to the issuance of the permits.

14. The church members conferred and, because they are averse to the use of alcohol, they determined that they would in fact pose objections.

15. Wendell Mazingo, a Deacon of the Church of God Holiness testified that the church members had been very fond of Paul Williams and had come to know "Mark," the Petitioner's husband of whom they are also quite fond.

16. Although there has been litter on the property of the store and the church, Deacon Mazingo believes that the litter is caused primarily from people who loiter about the community center which is across the street.

17. The church members do not object to the store on any grounds other than they are opposed to the use of alcohol.

Based on the above Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The statute is silent as to the manner in which the 50 foot distance should be measured. If the 50 foot measurement is to be made from the nearest points on each building, the purpose of the statute might create abberent results.

For example, in a large city, a permittee location may face one street and a church may be behind it, facing the opposite street. The area behind each of these buildings may be inaccessible and used only for alleyway purposes. Nevertheless, a measurement made from the nearest point to the nearest point could result in a measurement of less than 50 feet, although members of the public would in fact have to circumnavigate the entire block to get from front door to front door.

Conversely, taking the 50 foot measurement from front door to front door could also result in an abberant situation. If the measurement from front door to front door is greater than 50 feet, but the properties abut each other with public access area in between, this could cause a disturbance to the church such that the statute contemplates avoiding.

In the instant case the yard area between the church and the permittee location appear at the present time to be accessible to the public in what is an apparently rural section of Charlotte. There is no evidence to indicate whether the church or the permittee owns the grassy area between and around the two buildings.

2. While each of these measurements could in various scenarios cause an inequitable result, there should be a set rule for the taking of the 50 foot measurement.

The Petitioner has submitted no cases from this jurisdiction on the 50 foot rule. However, the Petitioner has submitted cases from other jurisdictions. For example, in Kroger Co. v. Michigan Liquor Control Commission, 366 Mich. 481(115) N.W. 2d. 377 (1962), the Court ruled that the distance should be measured along the center line of the street. Further, in the case of Wakefield, 10 Alaska 599 (1945), the Court held that measurements should be from front door to front door. Also, in Hunt Club, Inc. v. Moberly, 407 S.W. 2d. 148 (Kentucky), the court ruled that the measurement between the church and the license permises was to be taken on the street and not the shortest distance between the two rear portions of the building.

Lastly, in the New York Case of R. H. Massey and Co. v. Murray, 38 NYS 903 (1896), the Court ruled that the measurement should be made "entrance to entrance."

While none of these cases control in the instant matter, it is apparent that courts have struggled with the directions for taking the 50 foot measurement.

After due and deliberate consideration on this issue, it appears to the undersigned that the appropriate measurement should be from front door to front door. In the instant case, there is no evidence to indicate what the measurement is from front door to front door. However, it appears from a video introduced as evidence that the measurement may very likely be greater than 50 feet.

Based upon the above Conclusions of Law, the undersigned makes the following:

RECOMMENDATION

1. It is recommended that the ALE agent remeasure the premises from the front door of the licensed premises to the front door of the church.

2. It is further recommended if this measurement is greater than 50 feet, the Petitioner's permits be issued.

ORDER

It is hereby ordered that the agency serve a copy of the Final Decision on the Office of Administrative Hearings, P.O. Drawer 27747, Raleigh, N.C. 27611-7447, in accordance with North General Statute 150B-36(b).

NOTICE

The agency making the Final Decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney on record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina Alcoholic Beverage Control Commission.

This the 29th day of June, 1998.

Dolores O. Smith
Administrative Law Judge

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(Updated through July 28, 1998)

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This index provides information related to notices, rules and other documents published in the Register. It includes information about rules for which Notice of Rule-Making Proceedings or Notice of Text have been published, rules submitted to the Rules Review Commission and rules codified since the last session of the General Assembly. For assistance contact the Rules Division at 919/733-2678.

Fiscal Note: S = Rule affects the expenditure or distribution of state funds. L = Rule affects the expenditure or distribution of local government funds. SE = Rule has a substantial economic impact of at least $5,000,000 in a 12-month period. * = Rule-making agency has determined that the rule does not impact state or local funds and does not have a substantial economic impact. See G.S. 150B-21.4.

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26 NCAC 04 .0101		12:12 NCR 1071	12:16 NCR 1508	*	Approve	04/15/98			13:01 NCR 43	
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2 NCAC 34 .0302	12:09 NCR 743		12:14 NCR 1234	*	Approve	04/15/98	*		13:01 NCR 43	
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2 NCAC 34 .0312	12:09 NCR 743		12:14 NCR 1234	*	Approve	04/15/98			13:01 NCR 43	
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2 NCAC 34 .0323	12:09 NCR 743		12:14 NCR 1234	*	Approve	04/15/98			13:01 NCR 43	
2 NCAC 34 .0325	12:09 NCR 743		12:14 NCR 1234	*	Approve	04/15/98	*		13:01 NCR 43	
2 NCAC 34 .0328	12:09 NCR 743		12:14 NCR 1234	*	Approve	04/15/98	*		13:01 NCR 43	
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2 NCAC 34 .0406	12:09 NCR 743		12:14 NCR 1234	*	Approve	04/15/98			13:01 NCR 43	
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2 NCAC 34 .0504	12:09 NCR 743		12:14 NCR 1234	*	Approve	04/15/98	*		13:01 NCR 43	
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2 NCAC 34 .0508	12:09 NCR 743		12:14 NCR 1234	*	Approve	04/15/98			13:01 NCR 43	
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2 NCAC 34 .0602	12:09 NCR 743		12:14 NCR 1234	*	Approve	04/15/98	*		13:01 NCR 43	
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2 NCAC 34 .0604	12:09 NCR 743		12:14 NCR 1234	*	Approve	04/15/98	*		13:01 NCR 43	
2 NCAC 34 .0605		11:21 NCR 1651	12:06 NCR 455	*						
2 NCAC 34 .0605	12:09 NCR 743		12:14 NCR 1234	*	Approve	04/15/98	*		13:01 NCR 43	
2 NCAC 34 .0701	12:09 NCR 743		12:14 NCR 1234	*	Approve	04/15/98	*		13:01 NCR 43	
2 NCAC 34 .0702	12:09 NCR 743									
2 NCAC 34 .0703	12:09 NCR 743		12:14 NCR 1234	*	Approve	04/15/98	*		13:01 NCR 43	
2 NCAC 34 .0803	12:09 NCR 743		12:14 NCR 1234	*	Approve	04/15/98	*		13:01 NCR 43	
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21 NCAC 57A .0402	13:01 NCR 3									
21 NCAC 57A .0403	13.01 NCR 3									
21 NCAC 57A .0404	13:01 NCR 3									
21 NCAC 57A .0405	13:01 NCR 3									
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21 NCAC 03 .0103		12:18 NCR 1714	12:22 NCR 2007	S						
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21 NCAC 08A .0301	13:03 NCR 269									

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21 NCAC 08A .0309	12:08 NCR 619		12:13 NCR 1138	*	Approve	04/15/98	*		13:01 NCR 43	
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21 NCAC 08F .0103	12:08 NCR 619		12:13 NCR 1138	*	Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 08F .0105	12:08 NCR 619		12:13 NCR 1138	*	Approve	04/15/98			13:01 NCR 43	
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21 NCAC 08F .0410	12:08 NCR 619		12:13 NCR 1138	*	Approve	04/15/98			13:01 NCR 43	
21 NCAC 08G .0404	12:08 NCR 619		12:13 NCR 1138	*	Approve	04/15/98	*		13:01 NCR 43	
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21 NCAC 08H .0001	13:03 NCR 269									
21 NCAC 08I .0004	12:08 NCR 619		12:13 NCR 1138	*	Approve	04/15/98			13:01 NCR 43	
21 NCAC 08I .0005	12:08 NCR 619		12:13 NCR 1138	*	Approve	04/15/98			13:01 NCR 43	
21 NCAC 08J .0001	12:08 NCR 619		12:13 NCR 1138	*	Approve	04/15/98			13:01 NCR 43	
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21 NCAC 08J .0005	12:08 NCR 619		12:13 NCR 1138	*	Approve	04/15/98	*		13:01 NCR 43	
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21 NCAC 08J .0007	13:03 NCR 269									
21 NCAC 08J .0010	13:03 NCR 269									
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21 NCAC 08J .0008	13:03 NCR 269									
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21 NCAC 08K .0104	13:03 NCR 269									
21 NCAC 08K .0301	12:08 NCR 619		12:13 NCR 1138	*	Approve	04/15/98			13:01 NCR 43	
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4 NCAC 01K	11:09 NCR 569									
4 NCAC 01K .0501	11:09 NCR 569									
4 NCAC 01K .0502	11:09 NCR 569									
4 NCAC 01K .0503	11:09 NCR 569									
4 NCAC 01K .0504	11:09 NCR 569									
4 NCAC 01K .0505	11:09 NCR 569									
4 NCAC 01K .0506	11:09 NCR 569									
Community Assistance										
4 NCAC 19L .0805	11:09 NCR 569									
4 NCAC 19L .1900	11:09 NCR 569									
COSMETIC ART EXAMINERS										
21 NCAC 14H .0105	12:06 NCR 453		12:11 NCR 925	*	Object Approve	03/20/98 04/15/98	*		13:01 NCR 43	
21 NCAC 14I .0107	12:22 NCR 1981		13:02 NCR 246	*						
21 NCAC 14J .0105	12:06 NCR 453		12:11 NCR 925	*						

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					Action	Date				
21 NCAC 14J .0501	12:06 NCR 453		12:11 NCR 925	*	Object	03/20/98				
					Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 14K .0103	12:06 NCR 453		12:11 NCR 925	*	Object	03/20/98				
					Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 14L .0105	12:06 NCR 453		12:11 NCR 925	*	Approve	06/18/98			13:03 NCR 334	
21 NCAC 14N .0102	12:06 NCR 453		12:11 NCR 925	*	Object	03/20/98				
					Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 14N .0103	12:06 NCR 453		12:11 NCR 925	*						
21 NCAC 14N .0107	12:06 NCR 453		12:11 NCR 925	*	Object	03/20/98				
					Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 14N .0113	12:06 NCR 453		12:11 NCR 925	*	Object	03/20/98				
					Approve	04/15/98	*		13:01 NCR 43	
CRIME CONTROL & PUBLIC SAFETY										
Governor's Crime Commission										
14A NCAC 07 .0313	11:24 NCR 1818		12:01 NCR 6	*						
CULTURAL RESOURCES										
North Carolina Historical Commission										
7 NCAC 04R .0909	12:06 NCR 444	12:13 NCR 1174	12:13 NCR 1174	S	Object	03/20/98				
					Approve	04/15/98	*		13:01 NCR 43	
7 NCAC 04R .0910	12:06 NCR 444	12:13 NCR 1174	12:13 NCR 1174	S	Object	03/20/98				
					Approve	04/15/98	*		13:01 NCR 43	
7 NCAC 04R .0911	12:06 NCR 444	12:13 NCR 1174	12:13 NCR 1174	S	Object	03/20/98				
					Approve	04/15/98	*		13:01 NCR 43	
7 NCAC 04R .0912	12:06 NCR 444	12:13 NCR 1174	12:13 NCR 1174	S	Object	03/20/98				
					Approve	04/15/98	*		13:01 NCR 43	
7 NCAC 04R .0913	12:06 NCR 444	12:13 NCR 1174	12:13 NCR 1174	S	Object	03/20/98				
					Approve	04/15/98			13:01 NCR 43	
7 NCAC 04R .0914	12:06 NCR 444	12:13 NCR 1174	12:13 NCR 1174	S	Object	03/20/98				
					Approve	04/15/98	*		13:01 NCR 43	
7 NCAC 04R .0915	12:06 NCR 444	12:13 NCR 1174	12:13 NCR 1174	S	Object	03/20/98				
					Approve	04/15/98	*		13:01 NCR 43	
USS North Carolina Battleship Commission										
7 NCAC 05 .0203		11:19 NCR 1436 Temp Expired 12:16 NCR 1511	12:16 NCR 1511	S/L	Approve	04/15/98			13:01 NCR 43	
DENTAL EXAMINERS										
21 NCAC 16H .0101	12:24 NCR 2203									

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					Action	Date				
21 NCAC 16H .0102	12:24 NCR 2203									
21 NCAC 16H .0103	12:24 NCR 2203									
21 NCAC 16H .0104	12:24 NCR 2203									
21 NCAC 16H .0201	12:24 NCR 2203									
21 NCAC 16H .0202	12:24 NCR 2203									
21 NCAC 16H .0203	12:24 NCR 2203									
21 NCAC 16H .0204	12:24 NCR 2203									
21 NCAC 16H .0205	12:24 NCR 2203									
21 NCAC 16H .0206	12:24 NCR 2203									
21 NCAC 16I .0004	11:20 NCR 1538									
21 NCAC 16I .0005	11:20 NCR 1538									
21 NCAC 16Q .0101	12:24 NCR 2203									
21 NCAC 16Q .0201	12:24 NCR 2203									
21 NCAC 16Q .0301	12:24 NCR 2203									
21 NCAC 16R .0002	11:20 NCR 1538									
21 NCAC 16R .0003	11:20 NCR 1538									
21 NCAC 16R .0005	11:20 NCR 1538									
ELECTRICAL CONTRACTORS, EXAMINERS OF										
21 NCAC 18B	12:22 NCR 1982									
21 NCAC 18B .0209	N/A	N/A	N/A		Approve	04/15/98			13:01 NCR 43	
21 NCAC 18B .0404	N/A	N/A	N/A		Approve	04/15/98			13:01 NCR 43	
21 NCAC 18B .0802	N/A	N/A	N/A		Approve	04/15/98			13:01 NCR 43	
EMPLOYEE ASSISTANCE PROFESSIONALS, BOARD OF										
21 NCAC 11 .0101	12:19 NCR 1764	12:21 NCR 1884	13:03 NCR 313	S/L						
21 NCAC 11 .0102	12:19 NCR 1764	12:21 NCR 1884	13:03 NCR 313	S/L						
21 NCAC 11 .0103	12:19 NCR 1764	12:21 NCR 1884	13:03 NCR 313	S/L						
21 NCAC 11 .0104	12:19 NCR 1764	12:21 NCR 1884	13:03 NCR 313	S/L						
21 NCAC 11 .0105	12:19 NCR 1764	12:21 NCR 1884	13:03 NCR 313	S/L						

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					Action	Date				
21 NCAC 11 .0106	12:19 NCR 1764	12:21 NCR 1884	13:03 NCR 313	S/L						
21 NCAC 11 .0107	12:19 NCR 1764	12:21 NCR 1884	13:03 NCR 313	S/L						
21 NCAC 11 .0108	12:19 NCR 1764	12:21 NCR 1884	13:03 NCR 313	S/L						
21 NCAC 11 .0109	12:19 NCR 1764	12:21 NCR 1884	13:03 NCR 313	S/L						
21 NCAC 11 .0110	12:19 NCR 1764	12:21 NCR 1884	13:03 NCR 313	S/L						
21 NCAC 11 .0111	12:19 NCR 1764	12:21 NCR 1884	13:03 NCR 313	S/L						
21 NCAC 11 .0112	12:19 NCR 1764	12:21 NCR 1884	13:03 NCR 313	S/L						
ENVIRONMENT AND NATURAL RESOURCES										
15A NCAC 01J .0401	12:08 NCR 614	12:09 NCR 833	12:14 NCR 1266	*	Approve	04/15/98			13:01 NCR 43	
15A NCAC 01J .0402	12:08 NCR 614	12:09 NCR 833	12:14 NCR 1266	*	Approve	04/15/98			13:01 NCR 43	
15A NCAC 01K	10:19 NCR 2506									
15A NCAC 01M .0101		11:19 NCR 1439	Temp Expired							
15A NCAC 01M .0102		11:19 NCR 1439	Temp Expired							
15A NCAC 01M .0201		11:19 NCR 1439	Temp Expired							
15A NCAC 01M .0202		11:19 NCR 1439	Temp Expired							
15A NCAC 01M .0301		11:19 NCR 1439	Temp Expired							
15A NCAC 01M .0302		11:19 NCR 1439	Temp Expired							
15A NCAC 01M .0303		11:19 NCR 1439	Temp Expired							
15A NCAC 01M .0304		11:19 NCR 1439	Temp Expired							
15A NCAC 01M .0305		11:19 NCR 1439	Temp Expired							
15A NCAC 01M .0306		11:19 NCR 1439	Temp Expired							
15A NCAC 01N .0101	12:08 NCR 614	12:16 NCR 1511								
15A NCAC 01N .0102	12:08 NCR 614	12:16 NCR 1511								
15A NCAC 01N .0103	12:08 NCR 614	12:16 NCR 1511								
15A NCAC 01N .0201	12:08 NCR 614	12:16 NCR 1511								
15A NCAC 01N .0202	12:08 NCR 614	12:16 NCR 1511								
15A NCAC 01N .0203	12:08 NCR 614	12:16 NCR 1511								
15A NCAC 01N .0301	12:08 NCR 614	12:16 NCR 1511								

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					Action	Date				
15A NCAC 01N .0302	12:08 NCR 614	12:16 NCR 1511								
15A NCAC 01N .0303	12:08 NCR 614	12:16 NCR 1511								
15A NCAC 01N .0304	12:08 NCR 614	12:16 NCR 1511								
15A NCAC 01N .0401	12:08 NCR 614	12:16 NCR 1511								
15A NCAC 01N .0402	12:08 NCR 614	12:16 NCR 1511								
15A NCAC 01N .0403	12:08 NCR 614	12:16 NCR 1511								
15A NCAC 01N .0501	12:08 NCR 614	12:16 NCR 1511								
15A NCAC 01N .0502	12:08 NCR 614	12:16 NCR 1511								
15A NCAC 01N .0503	12:08 NCR 614	12:16 NCR 1511								
15A NCAC 01N .0601	12:08 NCR 614	12:16 NCR 1511								
15A NCAC 01N .0602	12:08 NCR 614	12:16 NCR 1511								
15A NCAC 01N .0603	12:08 NCR 614	12:16 NCR 1511								
15A NCAC 01N .0604	12:08 NCR 614	12:16 NCR 1511								
15A NCAC 01N .0605	12:08 NCR 614	12:16 NCR 1511								
15A NCAC 01N .0606	12:08 NCR 614	12:16 NCR 1511								
15A NCAC 01N .0701	12:08 NCR 614	12:16 NCR 1511								
15A NCAC 01N .0702	12:08 NCR 614	12:16 NCR 1511								
15A NCAC 01N .0703	12:08 NCR 614	12:16 NCR 1511								
15A NCAC 01N .0704	12:08 NCR 614	12:16 NCR 1511								
15A NCAC 01N .0705	12:08 NCR 614	12:16 NCR 1511								
15A NCAC 01N .0801	12:08 NCR 614	12:16 NCR 1511								
15A NCAC 01N .0802	12:08 NCR 614	12:16 NCR 1511								
15A NCAC 01N .0901	12:08 NCR 614	12:16 NCR 1511								
15A NCAC 01N .0902	12:08 NCR 614	12:16 NCR 1511								
15A NCAC 01O .0101	12:16 NCR 1482	12:17 NCR 1617								
15A NCAC 01O .0102	12:16 NCR 1482	12:17 NCR 1617								
15A NCAC 01O .0103	12:16 NCR 1482	12:17 NCR 1617								
15A NCAC 01O .0104	12:16 NCR 1482	12:17 NCR 1617								

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15A NCAC 01O .0105	12:16 NCR 1482	12:17 NCR 1617								
15A NCAC 01O .0106	12:16 NCR 1482	12:17 NCR 1617								
15A NCAC 01O .0107	12:16 NCR 1482	12:17 NCR 1617								
15A NCAC 01O .0108	12:16 NCR 1482	12:17 NCR 1617								
15A NCAC 01O .0109	12:16 NCR 1482	12:17 NCR 1617								
15A NCAC 12B .0901		12:03 NCR 209								
15A NCAC 19C .0206		12:15 NCR 1451								
Coastal Resources Commission										
15A NCAC 07	11:04 NCR 183									
15A NCAC 07H .0208	11:19 NCR 1408		11:27 NCR 2058	*						
15A NCAC 07H .0208	12:21 NCR 1873									
15A NCAC 07H .0209	12:21 NCR 1873									
15A NCAC 07H .0210	12:02 NCR 52									
15A NCAC 07H .0306	11:04 NCR 183		11:11 NCR 907	*						
15A NCAC 07H .0306	12:19 NCR 1763									
15A NCAC 07H .0308	12:16 NCR 1489		13:01 NCR 26	S						
15A NCAC 07H .0310	12:11 NCR 919		12:20 NCR 1828	S						
15A NCAC 07H .1100	12:21 NCR 1873									
15A NCAC 07H .1200	12:21 NCR 1873									
15A NCAC 07H .1300	12:21 NCR 1873									
15A NCAC 07H .1400	12:21 NCR 1873									
15A NCAC 07H .1500	12:21 NCR 1873									
15A NCAC 07H .1600	12:21 NCR 1873									
15A NCAC 07H .1600	11:15 NCR 1200									
15A NCAC 07H .1601	11:15 NCR 1200		11:27 NCR 2071	*	Approve	04/15/98			13:01 NCR 43	
15A NCAC 07H .1604	11:15 NCR 1200		11:27 NCR 2071	*	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 07H .1605	11:15 NCR 1200		11:27 NCR 2071	*	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 07H .1700	12:21 NCR 1873									

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					Action	Date				
15A NCAC 07H .1705	12:16 NCR 1489		13:01 NCR 26	S						
15A NCAC 07J .0200	12:24 NCR 2202									
15A NCAC 07J .0405	12:24 NCR 2202									
15A NCAC 07K .0203	12:21 NCR 1873									
15A NCAC 07K .0208	12:21 NCR 1873									
15A NCAC 07L .0202	12:21 NCR 1874									
15A NCAC 07L .0203	12:21 NCR 1874									
15A NCAC 07L .0206	12:21 NCR 1874									
15A NCAC 07L .0302	12:21 NCR 1874									
15A NCAC 07L .0304	12:21 NCR 1874									
15A NCAC 07L .0401	12:21 NCR 1874									
15A NCAC 07L .0405	12:21 NCR 1874									
15A NCAC 07M .0300	12:24 NCR 2202									
15A NCAC 07O .0105	13:02 NCR 176									
15A NCAC 07O .0202	13:02 NCR 176									
Environmental Management Commission										
15A NCAC 02	10:24 NCR 3045									
15A NCAC 02	11:04 NCR 183									
15A NCAC 02	11:19 NCR 1408									
15A NCAC 02B .0101	11:24 NCR 1818		11:30 NCR 2303	*						
15A NCAC 02B .0202	11:24 NCR 1818		11:30 NCR 2303	*						
15A NCAC 02B .0223	11:02 NCR 75									
15A NCAC 02B .0223	11:03 NCR 109									
15A NCAC 02B .0227	10:18 NCR 2400		11:12 NCR 973	*						
15A NCAC 02B .0230	11:24 NCR 1818		11:30 NCR 2303	*						
15A NCAC 02B .0231	11:02 NCR 75		11:10 NCR 824 11:14 NCR 1136	L/SE						
15A NCAC 02B .0233	11:02 NCR 75		11:10 NCR 824	L	Object Approve	01/15/98 02/19/98	*		12:22 NCR 2012	Pending Leg. Action

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		12:02 NCR 77 12:14 NCR 1348 12:20 NCR 1836	11:14 NCR 1136	L						
			12:06 NCR 462	S/L/SE						
15A NCAC 02B .0308	12:12 NCR 993		12:21 NCR 1879	*						
			12:23 NCR 2091	L						
15A NCAC 02B .0308	12:14 NCR 1233		12:19 NCR 1769	*						
15A NCAC 02B .0308	12:16 NCR 1489									
15A NCAC 02B .0309	12:14 NCR 1233		12:19 NCR 1769	*						
15A NCAC 02B .0311	12:10 NCR 865		12:20 NCR 1825	*						
15A NCAC 02B .0311	12:23 NCR 2088									
15A NCAC 02B .0313	12:10 NCR 865		12:20 NCR 1825	*						
15A NCAC 02B .0316	11:26 NCR 1976		12:01 NCR 6	*	Approve	01/15/98	*		12:21 NCR 1886	Extend Com. Period 12:13 NCR 1095 Pending Leg. Action
15A NCAC 02D .0101	12:02 NCR 52									
15A NCAC 02D .0101	12:16 NCR 1482									
15A NCAC 02D .0105	N/A	N/A	N/A		Approve	04/15/98			13:01 NCR 43	
15A NCAC 02D .0108	11:15 NCR 1200									
15A NCAC 02D .0307	11:15 NCR 1200									
15A NCAC 02D .0405	12:16 NCR 1482		13:03 NCR 270	*						
15A NCAC 02D .0409	12:16 NCR 1482		13:03 NCR 270	*						
15A NCAC 02D .0410	12:16 NCR 1482		13:03 NCR 270							
15A NCAC 02D .0501	10:18 NCR 2318		12:22 NCR 1983	*						
15A NCAC 02D .0501	11:15 NCR 1200									
15A NCAC 02D .0501	11:04 NCR 183									
15A NCAC 02D .0503	10:24 NCR 3045		13:03 NCR 270	*						
15A NCAC 02D .0504	10:24 NCR 3045		13:03 NCR 270	*						
15A NCAC 02D .0518	11:19 NCR 1408									
15A NCAC 02D .0521	11:15 NCR 1200									
15A NCAC 02D .0524	11:15 NCR 1200									
15A NCAC 02D .0525	11:15 NCR 1200									

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					Action	Date				
15A NCAC 02D .0535	10:18 NCR 2317		12:08 NCR 650	*	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 02D .0601	10:18 NCR 2318		12:22 NCR 1983	*						
15A NCAC 02D .0602	10:18 NCR 2318		12:22 NCR 1983	*						
15A NCAC 02D .0604	10:18 NCR 2318		12:22 NCR 1983	*						
15A NCAC 02D .0605	10:18 NCR 2318		12:22 NCR 1983	*						
15A NCAC 02D .0606	10:18 NCR 2318		12 22 NCR 1983	*						
15A NCAC 02D .0607	10:18 NCR 2318		12:22 NCR 1983	*						
15A NCAC 02D .0608	10:18 NCR 2318		12:22 NCR 1983	*						
15A NCAC 02D .0610	10:18 NCR 2318		12:22 NCR 1983	*						
15A NCAC 02D .0610	11:15 NCR 1200									
15A NCAC 02D .0611	10:18 NCR 2318		12:22 NCR 1983	*						
15A NCAC 02D .0611	11:15 NCR 1200									
15A NCAC 02D .0612	10:18 NCR 2318		12:22 NCR 1983	*						
15A NCAC 02D .0612	11:15 NCR 1200									
15A NCAC 02D .0613	10:18 NCR 2318		12:22 NCR 1983	*						
15A NCAC 02D .0613	11:15 NCR 1200									
15A NCAC 02D .0614	10:18 NCR 2318		12:22 NCR 1983	*						
15A NCAC 02D .0614	11:15 NCR 1200									
15A NCAC 02D .0615	10:18 NCR 2318		12:22 NCR 1983	*						
15A NCAC 02D .0615	11:15 NCR 1200									
15A NCAC 02D .0806	11:26 NCR 1976									
15A NCAC 02D .0902	11:19 NCR 1408									
15A NCAC 02D .0903	10:18 NCR 2318		12:22 NCR 1983	*						
15A NCAC 02D .0903	11:15 NCR 1200									
15A NCAC 02D .0909	11:19 NCR 1408									
15A NCAC 02D .0912	11:15 NCR 1200									
15A NCAC 02D .0917	11:19 NCR 1408									
15A NCAC 02D .0918	11:19 NCR 1408									

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15A NCAC 02D .0919	11:19 NCR 1408									
15A NCAC 02D .0920	11:19 NCR 1408									
15A NCAC 02D .0921	11:19 NCR 1408									
15A NCAC 02D .0922	11:19 NCR 1408									
15A NCAC 02D .0923	11:19 NCR 1408									
15A NCAC 02D .0924	11:19 NCR 1408									
15A NCAC 02D .0927	10:18 NCR 2317		12:08 NCR 650	*	Approve	04/15/98			13:01 NCR 43	
15A NCAC 02D .0934	11:19 NCR 1408									
15A NCAC 02D .0948	11:19 NCR 1408									
15A NCAC 02D .0949	11:19 NCR 1408									
15A NCAC 02D .0950	11:19 NCR 1408									
15A NCAC 02D .0951	11:19 NCR 1408									
15A NCAC 02D .0952	12:16 NCR 1482									
15A NCAC 02D .0954	11:15 NCR 1200									
15A NCAC 02D .1100	11:08 NCR 442									
15A NCAC 02D .1102	11:08 NCR 442		12:08 NCR 650	SE	Approve	04/15/98			13:01 NCR 43	
15A NCAC 02D .1103	11:08 NCR 442		12:08 NCR 650	SE	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 02D .1104	11:08 NCR 442		12:08 NCR 650	SE	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 02D .1104	12:02 NCR 52	12:02 NCR 77								
15A NCAC 02D .1105	10:18 NCR 2318		12:22 NCR 1983	*						
15A NCAC 02D .1105	11:15 NCR 1200									
15A NCAC 02D .1106	11:08 NCR 442		12:08 NCR 650	SE	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 02D .1106	11:26 NCR 1976									
15A NCAC 02D .1201	10:18 NCR 2317		12:08 NCR 650	*	Approve	04/15/98			13:01 NCR 43	
15A NCAC 02D .1201	12:16 NCR 1482		13:03 NCR 270	L						
15A NCAC 02D .1202	12:16 NCR 1482		13:03 NCR 270	L						
15A NCAC 02D .1203	11:15 NCR 1200									
15A NCAC 02D .1203	12:16 NCR 1482		13:03 NCR 270	L						

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					Action	Date				
15A NCAC 02D .1204	10:18 NCR 2318		12:22 NCR 1983	*						
15A NCAC 02D .1204	12:16 NCR 1482		13:03 NCR 270	L						
15A NCAC 02D .1205	10:18 NCR 2317		12:08 NCR 650	*	Approve	04/15/98			13:01 NCR 43	
15A NCAC 02D .1205	12:16 NCR 1482		13:03 NCR 270	L						
15A NCAC 02D .1206	12:16 NCR 1482		13:03 NCR 270	L						
15A NCAC 02D .1208	12:16 NCR 1482		13:03 NCR 270	L						
15A NCAC 02D .1209	12:16 NCR 1482		13:03 NCR 270	L						
15A NCAC 02D .1404	10:18 NCR 2318		12:22 NCR 1983	*						
15A NCAC 02D .1404	11:15 NCR 1200									
15A NCAC 02D .1501	12:20 NCR 1817		13:03 NCR 270	*						
15A NCAC 02D .1502	12:20 NCR 1817		13:03 NCR 270	*						
15A NCAC 02D .1503	12:20 NCR 1817		13:03 NCR 270	*						
15A NCAC 02D .1504	12:20 NCR 1817		13:03 NCR 270	*						
15A NCAC 02D .1601	12:20 NCR 1817		13:03 NCR 270	*						
15A NCAC 02D .1700	12:02 NCR 52									
15A NCAC 02D .1903	12:16 NCR 1482									
15A NCAC 02D .1904	12:16 NCR 1482									
15A NCAC 02D .2001	12:20 NCR 1817		13:03 NCR 270	*						
15A NCAC 02D .2002	12:20 NCR 1817		13:03 NCR 270	*						
15A NCAC 02D .2003	12:20 NCR 1817		13:03 NCR 270	*						
15A NCAC 02D .2004	12:20 NCR 1817		13:03 NCR 270	*						
15A NCAC 02D .2005	12:20 NCR 1817		13:03 NCR 270	*						
15A NCAC 02D .2200	11:26 NCR 1976									
15A NCAC 02H .0226	12:20 NCR 1817									
15A NCAC 02H .0610	10:18 NCR 2317		12:08 NCR 650	*						
15A NCAC 02H .0610	11:08 NCR 442									
15A NCAC 02H .0610	12:02 NCR 52	12:02 NCR 77								
15A NCAC 02H .1202	11:15 NCR 1200									
15A NCAC 02H .1203	11:15 NCR 1200									

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				
15A NCAC 02H .1204	11:15 NCR 1200									
15A NCAC 02H .1205	11:15 NCR 1200									
15A NCAC 02L	11:15 NCR 1200 11:15 NCR 1204									
15A NCAC 02L .0106		10:19 NCR 2508	11:21 NCR 1639	*	Approve	12/18/98	*		12:17 NCR 1620	Pending Leg. Action
15A NCAC 02L .0106		12:08 NCR 713								
15A NCAC 02L .0115	11:15 NCR 1200		11:21 NCR 1639	L	Object	12/18/97				
					Approve	02/19/98	*		12:22 NCR 2012	Pending Leg. Action
15A NCAC 02L .0115	11:15 NCR 1204	12:08 NCR 713								
15A NCAC 02L .0202	10:20 NCR 2591									
15A NCAC 02N	11:15 NCR 1200									
15A NCAC 02N	11:15 NCR 1204									
15A NCAC 02N .0701	11:15 NCR 1200	12:08 NCR 713	11:21 NCR 1639	*	Approve	12/18/97	*		12:17 NCR 1620	Pending Leg. Action
15A NCAC 02N .0707	11:15 NCR 1204	12:08 NCR 713	11:21 NCR 1639	*	Object	12/18/97				
					Approve	02/19/98	*		12:22 NCR 2012	Pending Leg. Action
15A NCAC 02P	11:15 NCR 1200									
15A NCAC 02P .0402	11:15 NCR 1204	10:19 NCR 2512	11:21 NCR 1639	*	Approve	12/18/97			12:17 NCR 1620	Pending Leg. Action
15A NCAC 02P .0402	11:15 NCR 1204	12:08 NCR 713								
15A NCAC 02Q .0101	10:18 NCR 2317		12:08 NCR 650	*	Approve	04/15/98			13:01 NCR 43	
15A NCAC 02Q .0102	10:18 NCR 2317		12:08 NCR 650	*	Approve	04/15/98			13:01 NCR 43	
15A NCAC 02Q .0102			11:06 NCR 350	*						
15A NCAC 02Q .0102	11:19 NCR 1408									
15A NCAC 02Q .0102	12:02 NCR 52		13:03 NCR 270	*						
15A NCAC 02Q .0102	12:16 NCR 1482									
15A NCAC 02Q .0103	12:16 NCR 1482		13:03 NCR 270	*						
15A NCAC 02Q .0103	12:20 NCR 1817									
15A NCAC 02Q .0107	12:16 NCR 1482		13:03 NCR 270	*						
15A NCAC 02Q .0304	11:26 NCR 1976		13:03 NCR 270	*						
15A NCAC 02Q .0306	11:26 NCR 1976		13:03 NCR 270	*						
15A NCAC 02Q .0309	11:26 NCR 1976		13:03 NCR 270	*						
15A NCAC 02Q .0314	11:26 NCR 1976		13:03 NCR 270	*						

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					Action	Date				
15A NCAC 02Q .0315	12:20 NCR 1817		13:03 NCR 270	*						
15A NCAC 02Q .0301	10:18 NCR 2317		12:08 NCR 650	*	Approve	04/15/98			13:01 NCR 43	
15A NCAC 02Q .0401	12:04 NCR 240		13:03 NCR 270	*						
15A NCAC 02Q .0402	12:04 NCR 240		13:03 NCR 270	*						
15A NCAC 02Q .0501	10:18 NCR 2317		12:08 NCR 650	*	Approve	04/15/98			13:01 NCR 43	
15A NCAC 02Q .0511	12:20 NCR 1817		13:03 NCR 270	*						
15A NCAC 02Q .0700	11:08 NCR 442									
15A NCAC 02Q .0701	11:08 NCR 442		12:08 NCR 650	SE	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 02Q .0702	11:08 NCR 442		12:08 NCR 650	SE	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 02Q .0703	11:08 NCR 442		12:08 NCR 650	SE	Approve	04/15/98			13:01 NCR 43	
15A NCAC 02Q .0704	11:08 NCR 442		12:08 NCR 650	SE	Approve	04/15/98			13:01 NCR 43	
15A NCAC 02Q .0705	11:08 NCR 442		12:08 NCR 650	SE	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 02Q .0706	11:08 NCR 442		12:08 NCR 650	SE	Approve	04/15/98			13:01 NCR 43	
15A NCAC 02Q .0707	11:08 NCR 442		12:08 NCR 650	SE	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 02Q .0708	11:08 NCR 442		12:08 NCR 650	SE	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 02Q .0709	11:08 NCR 442		12:08 NCR 650	SE	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 02Q .0710	11:08 NCR 442		12:08 NCR 650	SE	Approve	04/15/98			13:01 NCR 43	
15A NCAC 02Q .0711	11:08 NCR 442		12:08 NCR 650	SE	Approve	04/15/98			13:01 NCR 43	
15A NCAC 02Q .0712	11:08 NCR 442		12:08 NCR 650	SE	Approve	04/15/98			13:01 NCR 43	
15A NCAC 02Q .0713	11:08 NCR 442		12:08 NCR 650	SE	Approve	04/15/98			13:01 NCR 43	
15A NCAC 02Q .0801	12:02 NCR 52		13:03 NCR 270	*						
15A NCAC 02Q .0803	12:02 NCR 52		13:03 NCR 270	*						
15A NCAC 02Q .0808	12:16 NCR 1482		13:03 NCR 270	*						
15A NCAC 02R .0101	12:02 NCR 52		12:14 NCR 1267	*	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 02R .0102	12:02 NCR 52		12:14 NCR 1267	*	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 02R .0201	12:02 NCR 52		12:14 NCR 1267	*	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 02R .0202	12:02 NCR 52		12:14 NCR 1267	S	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 02R .0203	12:02 NCR 52		12:14 NCR 1267	S	Approve	04/15/98	*		13:01 NCR 43	

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				
15A NCAC 02R .0204	12:02 NCR 52		12:14 NCR 1267	S						
15A NCAC 02R .0205	12:02 NCR 52		12:14 NCR 1267	S						
15A NCAC 02R .0301	12:02 NCR 52		12:14 NCR 1267	*	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 02R .0302	12:02 NCR 52		12:14 NCR 1267	S	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 02R .0401	12:02 NCR 52		12:14 NCR 1267	S	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 02R .0402	12:02 NCR 52		12:14 NCR 1267	S	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 02R .0403	12:02 NCR 52		12:14 NCR 1267	S	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 02R .0501	12:02 NCR 52		12:14 NCR 1267	S	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 02R .0502		11:27 NCR 2075	12:14 NCR 1267	*	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 02R .0503		11:27 NCR 2075	12:14 NCR 1267	*	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 02R .0504		11:27 NCR 2075	12:14 NCR 1267	*	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 02R .0600	12:02 NCR 52									
Health Services, Commission for										
15A NCAC 13A .0100	12:02 NCR 52									
15A NCAC 13A .0109	12:07 NCR 509		12:22 NCR 2000	*						
15A NCAC 13A .0110	12:07 NCR 509		12:22 NCR 2000	*						
15A NCAC 13A .0111	12:07 NCR 509		12:22 NCR 2000	*						
15A NCAC 13B .1301		12:12 NCR 1064	12:24 NCR 2211	*						
15A NCAC 13B .1624	11:19 NCR 1764	13:03 NCR 325	12:24 NCR 2211	L						
15A NCAC 13B .1627	11:08 NCR 442		11:13 NCR 1055	*						
15A NCAC 13B .1800	11:08 NCR 442									
15A NCAC 13B .1800	11:26 NCR 1976									
15A NCAC 18A	11:04 NCR 183									
15A NCAC 18A .0425		12:14 NCR 1352								
15A NCAC 18A .0432		12:14 NCR 1352								
15A NCAC 18A .1601		12:21 NCR 1882								
15A NCAC 18A .1611		12:21 NCR 1882								
15A NCAC 18A .1720	12:16 NCR 1482	12:18 NCR 1713 12:21 NCR 1882								

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					Action	Date				
		12:24 NCR 2228								
15A NCAC 18A .1810		12:24 NCR 2228								
15A NCAC 18A .2308	12:03 NCR 168		12:07 NCR 519	*	Ext. Review **Object**	12/18/97 **01/15/98**				
15A NCAC 18A .2309	12:03 NCR 168		12:07 NCR 519	*	Ext. Review **Object**	12/18/97 **01/15/98**				
15A NCAC 18A .2508	12:08 NCR 614		13:01 NCR 31	*						
15A NCAC 18A .2513	12:08 NCR 614		13:01 NCR 31	*						
15A NCAC 18A .2515	12:08 NCR 614		13:01 NCR 31	*						
15A NCAC 18A .2517	12:08 NCR 614		13:01 NCR 31	*						
15A NCAC 18A .2518	12:08 NCR 614		13:01 NCR 31	*						
15A NCAC 18A .2522	12:08 NCR 614		13:01 NCR 31	*						
15A NCAC 18A .2526	12:08 NCR 614		13:01 NCR 31	*						
15A NCAC 18A .2528	12:08 NCR 614		13:01 NCR 31	*						
15A NCAC 18A .2530	12:08 NCR 614		13:01 NCR 31	*						
15A NCAC 18A .2531	12:08 NCR 614		13:01 NCR 31	*						
15A NCAC 18A .2532	12:08 NCR 614		13:01 NCR 31	*						
15A NCAC 18A .2535	12:08 NCR 614		13:01 NCR 31	*						
15A NCAC 18A .2537	12:08 NCR 614		13:01 NCR 31	*						
15A NCAC 18A .2539	12:08 NCR 614		13:01 NCR 31	*						
15A NCAC 18A .2543	12:08 NCR 614		13:01 NCR 31	*						
15A NCAC 18A .2600	12:04 NCR 240									
15A NCAC 18A .2612		12:14 NCR 1352								
15A NCAC 18A .2801	12:16 NCR 1482	12:19 NCR 1782	13:02 NCR 235	*						
15A NCAC 18A .2802	12:16 NCR 1482	12:19 NCR 1782	13:02 NCR 235	*						
15A NCAC 18A .2803	12:16 NCR 1482	12:19 NCR 1782	13:02 NCR 235	*						
15A NCAC 18A .2804	12:16 NCR 1482	12:19 NCR 1782	13:02 NCR 235	*						
15A NCAC 18A .2805	12:16 NCR 1482									
15A NCAC 18A .2806	12:16 NCR 1482									
15A NCAC 18A .2807	12:16 NCR 1482									

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				
15A NCAC 18A .2808	12:16 NCR 1482		13:02 NCR 235	*						
15A NCAC 18A .2809	12:16 NCR 1482									
15A NCAC 18A .2810	12:16 NCR 1482	12:19 NCR 1782	13:02 NCR 235	*						
15A NCAC 18A .2811	12:16 NCR 1482									
15A NCAC 18A .2812	12:16 NCR 1482	12:19 NCR 1782	13:02 NCR 235	*						
15A NCAC 18A .2813	12:16 NCR 1482	12:19 NCR 1782	13:02 NCR 235	*						
15A NCAC 18A .2814	12:16 NCR 1482									
15A NCAC 18A .2815	12:16 NCR 1482	12:19 NCR 1782	13:02 NCR 235	*						
15A NCAC 18A .2816	12:16 NCR 1482									
15A NCAC 18A .2817	12:16 NCR 1482		13:02 NCR 235	*						
15A NCAC 18A .2818	12:16 NCR 1482									
15A NCAC 18A .2819	12:16 NCR 1482	12:19 NCR 1782	13:02 NCR 235	*						
15A NCAC 18A .2820	12:16 NCR 1482		13:02 NCR 235	*						
15A NCAC 18A .2821	12:16 NCR 1482									
15A NCAC 18A .2822	12:16 NCR 1482	12:19 NCR 1782	13:02 NCR 235	*						
15A NCAC 18A .2823	12:16 NCR 1482	12:19 NCR 1782	13:02 NCR 235	*						
15A NCAC 18A .2824	12:16 NCR 1482		13:02 NCR 235	*						
15A NCAC 18A .2825	12:16 NCR 1482		13:02 NCR 235	*						
15A NCAC 18A .2826	12:16 NCR 1482									
15A NCAC 18A .2827	12:16 NCR 1482	12:19 NCR 1782	13:02 NCR 235	*						
15A NCAC 18A .2828	12:16 NCR 1482		13:02 NCR 235	*						
15A NCAC 18A .2829	12:16 NCR 1482		13:02 NCR 235	*						
15A NCAC 18A .2830	12:16 NCR 1482	12:19 NCR 1782	13:02 NCR 235	*						
15A NCAC 18A .2831	12:16 NCR 1482	12:19 NCR 1782	13:02 NCR 235	*						
15A NCAC 18A .2832	12:16 NCR 1482		13:02 NCR 235	*						
15A NCAC 18A .2833	12:16 NCR 1482	12:19 NCR 1782	13:02 NCR 235	*						
15A NCAC 18A .2834	12:16 NCR 1482	12:19 NCR 1782	13:02 NCR 235	*						
15A NCAC 18A .2835	12:16 NCR 1482									

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					Action	Date				
15A NCAC 18A .2836	12:16 NCR 1482									
15A NCAC 18A .3101	12:11 NCR 920	12:12 NCR 1064	12:20 NCR 1829	S						
15A NCAC 18A .3102	12:11 NCR 920	12:12 NCR 1064	12:20 NCR 1829	S						
15A NCAC 18A .3103	12:11 NCR 920	12:12 NCR 1064	12:20 NCR 1829	S						
15A NCAC 18A .3104	12:11 NCR 920	12:12 NCR 1064	12:20 NCR 1829	S						
15A NCAC 18A .3105	12:11 NCR 920	12:12 NCR 1064	12:20 NCR 1829	S						
15A NCAC 18A .3106	12:11 NCR 920	12:12 NCR 1064	12:20 NCR 1829	S						
15A NCAC 18A .3107	12:11 NCR 920	12:12 NCR 1064	12:20 NCR 1829	S						
15A NCAC 18A .3108	12:11 NCR 920	12:12 NCR 1064	12:20 NCR 1829	S						
15A NCAC 18A .3109	12:11 NCR 920	12:12 NCR 1064	12:20 NCR 1829	S						
15A NCAC 18A .3110	12:11 NCR 920	12:12 NCR 1064	12:20 NCR 1829	S						
15A NCAC 18A .3111	12:11 NCR 920	12:12 NCR 1064	12:20 NCR 1829	S						
15A NCAC 19A .0101	12:02 NCR 52	12:02 NCR 88								
15A NCAC 21H .0110	12:20 NCR 1822									
15A NCAC 21H .0111	12:20 NCR 1822									
15A NCAC 21H .0113	12:20 NCR 1822									
15A NCAC 26C .0001	11:19 NCR 1408									
15A NCAC 26C .0002	11:19 NCR 1408									
15A NCAC 26C .0003	11:19 NCR 1408									
15A NCAC 26C .0004	11:19 NCR 1408									
15A NCAC 26C .0005	11:19 NCR 1408									
15A NCAC 26C .0006	11:19 NCR 1408									
15A NCAC 26C .0007	11:19 NCR 1408									
Land Resources/Land Quality										
15A NCAC 04B .0006	12:20 NCAC 1817									
15A NCAC 04B .0007	12:20 NCAC 1817									
15A NCAC 04B .0027	12:20 NCAC 1817									
Marine Fisheries Commission										

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					Action	Date				
15A NCAC 03	11:11 NCR 881									
15A NCAC 03	11:20 NCR 1537									
15A NCAC 03	11:26 NCR 1985									
15A NCAC 03H .0103	12:23 NCR 2089									
15A NCAC 03I .0101	12:23 NCR 2089		13:03 NCR 303	*						
15A NCAC 03J .0107	12:23 NCR 2089		13:03 NCR 303	*						
15A NCAC 03J .0109	12:23 NCR 2089		13:03 NCR 303	*						
15A NCAC 03J .0202	11:07 NCR 407		11:11 NCR 888	*						
15A NCAC 03J .0202	11:26 NCR 1976	12:12 NCR 1063	12:05 NCR 418	*	Approve	04/15/98	*		13:01 NCR 43	
			12:12 NCR 1002	*	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 03L .0102	11:07 NCR 407		11:11 NCR 888	*						
15A NCAC 03M .0503	12:19 NCR 1762	12:23 NCR 2094	13:03 NCR 303	*						
15A NCAC 03M .0507	12:23 NCR 2089	12:23 NCR 2094	13:03 NCR 303	*						
15A NCAC 03M .0513	11:26 NCR 1976		12:05 NCR 418	*						
15A NCAC 03M .0513	11:26 NCR 1985		12:12 NCR 1002	*	Approve	04/15/98			13:01 NCR 43	
15A NCAC 03M .0515	12:23 NCR 2089		13:03 NCR 303	*						
15A NCAC 03O .0303		12:23 NCR 2094	13:03 NCR 303	*						
15A NCAC 03O .0306		12:19 NCR 1780	13:03 NCR 303	*						
		12:23 NCR 2094	13:03 NCR 303	*						
15A NCAC 03P .0103	12:23 NCR 2089		13:03 NCR 303	*						
15A NCAC 03P .0201	12:23 NCR 2089		13:03 NCR 303	*						
15A NCAC 03P .0202	12:23 NCR 2089		13:03 NCR 303	*						
15A NCAC 03P .0203	12:23 NCR 2089		13:03 NCR 303	*						
15A NCAC 03P .0301	12:23 NCR 2089		13:03 NCR 303	*						
15A NCAC 03P .0302	12:23 NCR 2089		13:03 NCR 303	*						
15A NCAC 03P .0303	12:23 NCR 2089		13:03 NCR 303	*						
15A NCAC 03P .0304	12:23 NCR 2089		13:03 NCR 303	*						
Parks and Recreation Commission										
15A NCAC 12A .0001	12:13 NCR 1097									
15A NCAC 12A .0004	12:13 NCR 1097									

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					Action	Date				
15A NCAC 12A .0005	12:13 NCR 1097									
15A NCAC 12B .0101	12:13 NCR 1097									
15A NCAC 12B .0104	12:13 NCR 1097									
15A NCAC 12B .0106	12:13 NCR 1097									
15A NCAC 12B .0203	12:13 NCR 1097									
15A NCAC 12B .0401	12:13 NCR 1097									
15A NCAC 12B .0402	12:13 NCR 1097									
15A NCAC 12B .0501	12:13 NCR 1097									
15A NCAC 12B .0602	12:13 NCR 1097									
15A NCAC 12B .0701	12:13 NCR 1097									
15A NCAC 12B .0702	12:13 NCR 1097									
15A NCAC 12B .0802	12:13 NCR 1097									
15A NCAC 12B .0901	12:13 NCR 1097									
15A NCAC 12B .1001	12:13 NCR 1097									
15A NCAC 12B .1004	12:13 NCR 1097									
15A NCAC 12B .1102	12:13 NCR 1097									
15A NCAC 12B .1201	12:13 NCR 1097									
Radiation Protection										
15A NCAC 11 .0100	12:22 NCR 1979									
15A NCAC 11 .0300	12:22 NCR 1979									
15A NCAC 11 .0500	12:22 NCR 1979									
15A NCAC 11 .0700	12:22 NCR 1979									
15A NCAC 11 .1000	12:22 NCR 1979									
15A NCAC 11 .1100	12:04 NCR 240									
15A NCAC 11 .1400	12:04 NCR 240									
15A NCAC 11 .1600	12:22 NCR 1979									
Soil & Water Conservation										
15A NCAC 06E .0105	12:20 NCR 1817		13:01 NCR 25	*						

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					Action	Date				
Water Pollution Control System Operators Certification Commission										
15A NCAC 08A .0101	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08A .0202	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08A .0301	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08A .0302	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08A .0303	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08B .0101	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08B .0102	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08B .0103	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08B .0104	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08B .0105	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08B .0106	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08B .0108	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08B .0109	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08B .0201	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08B .0202	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08B .0203	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08B .0204	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08B .0205	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08B .0207	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08B .0208	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08B .0209	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08B .0210	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08B .0211	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08B .0212	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08B .0213	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08B .0214	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08B .0301	11:26 NCR 1976		13:02 NCR 204	*						

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				
15A NCAC 08B .0302	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08B .0303	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08B .0304	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08B .0402	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08B .0404	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08B .0405	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08B .0406	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08B .0502	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08B .0506	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08C .0002	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08C .0004	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08C .0005	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08C .0006	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08C .0007	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08C .0008	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08D .0002	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08D .0004	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08D .0005	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08D .0006	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08E	11:26 NCR 1976									
15A NCAC 08F	11:26 NCR 1976									
15A NCAC 08G .0101	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .0102	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .0201	11:26 NCR 1976		13:02 NCR 204	S/L						
15A NCAC 08G .0202	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .0203	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .0204	11:26 NCR 1976		13:02 NCR 204	S/L						
15A NCAC 08G .0205	11:26 NCR 1976		13:02 NCR 204	*						

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				
15A NCAC 08G .0301	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .0302	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .0303	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .0304	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .0305	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .0306	11:26 NCR 1976		13:02 NCR 204	S/L						
15A NCAC 08G .0307	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .0308	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .0401	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .0402	11:26 NCR 1976		13:02 NCR 204	S/L						
15A NCAC 08G .0403	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .0404	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .0405	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .0406	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .0407	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .0408	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .0409	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .0501	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .0502	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .0503	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .0504	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .0505	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .0601	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .0602	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .0603	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .0604	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .0701	11:26 NCR 1976		13:02 NCR 204	S/L						
15A NCAC 08G .0801	11:26 NCR 1976		13:02 NCR 204	*						

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				
15A NCAC 08G .0802	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .0803	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .0804	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .0901	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .0902	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .1001	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .1002	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .1101	11:26 NCR 1976		13:02 NCR 204	*						
15A NCAC 08G .1102	11:26 NCR 1976		13:02 NCR 204	*						
Wildlife Resources Commission										
15A NCAC 10B .0113	12:06 NCR 445		12:12 NCR 1004	*	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 10B .0200	12:06 NCR 445									
15A NCAC 10B .0202	12.06 NCR 445		12:12 NCR 1004	*	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 10B .0203	12:06 NCR 445		12:12 NCR 1004	*	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 10B .0207	12:06 NCR 445		12:24 NCR 2205	*						
15A NCAC 10B .0209	12:06 NCR 445		12:12 NCR 1004	*	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 10B .0216	12:06 NCR 445		12:12 NCR 1004	*	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 10C .0203	12:06 NCR 445		12:12 NCR 1004	*	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 10C .0205	12:06 NCR 445		12:12 NCR 1004	*	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 10C .0212	12:06 NCR 445		12:12 NCR 1004	*	Approve	04/15/98			13:01 NCR 43	
15A NCAC 10C .0300	13:01 NCR 3									
15A NCAC 10C .0304	12:06 NCR 445		12.12 NCR 1004	*	Approve	04/15/98			13:01 NCR 43	
15A NCAC 10C .0305	12:06 NCR 445		12:12 NCR 1004	*	Approve	04/15/98			13:01 NCR 43	
15A NCAC 10C .0400	13:01 NCR 3									
15A NCAC 10C .0401	12:06 NCR 445		12:12 NCR 1004	*	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 10C .0402	12:06 NCR 445		12:12 NCR 1004	*	Approve	04/15/98			13:01 NCR 43	
15A NCAC 10C .0404	12:06 NCR 445		12:12 NCR 1004	*						
15A NCAC 10C .0407	12:06 NCR 445		12:12 NCR 1004	*	Approve	04/15/98			13:01 NCR 43	

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					Action	Date				
15A NCAC 10D	12:18 NCR 1694									
15A NCAC 10D .0002	12:06 NCR 445		12:12 NCR 1004	*	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 10D .0003	12:06 NCR 445		12:12 NCR 1004	*	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 10D .0003	12:18 NCR 1694		12:24 NCR 2205	*						
15A NCAC 10D .0004	12:06 NCR 445		12:12 NCR 1004	*	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 10F .0102	12:06 NCR 445		12:12 NCR 1004	*	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 10F .0103	12:06 NCR 445		12:12 NCR 1004	*	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 10F .0104	12:06 NCR 445		12:12 NCR 1004	*	Approve	04/15/98			13:01 NCR 43	
15A NCAC 10F .0105	12:06 NCR 445		12:12 NCR 1004	*	Approve	04/15/98			13:01 NCR 43	
15A NCAC 10F .0109	12:06 NCR 445		12:12 NCR 1004	*	Approve	04/15/98			13:01 NCR 43	
15A NCAC 10F .0301	12:19 NCR 1763	12:24 NCR 2224	12:24 NCR 2224	*						
15A NCAC 10F .0303	12:19 NCR 1763									
15A NCAC 10F .0303	N/A		N/A		Approve	05/21/98			13:02 NCR 249	
15A NCAC 10F .0305	12:10 NCR 865	12:16 NCR 1518	12:16 NCR 1518	*						
15A NCAC 10F .0310	12:19 NCR 1763	12:24 NCR 2224	12:24 NCR 2224	L						
15A NCAC 10F .0311	12:11 NCR 920	12:24 NCR 2224	12:17 NCR 1608	L						
15A NCAC 10F .0314	12:19 NCR 1763									
15A NCAC 10F .0317	12:11 NCR 920	12:24 NCR 2224	12:17 NCR 1608	L						
15A NCAC 10F .0318	12:06 NCR 445									
15A NCAC 10F .0327	12:11 NCR 920	12:24 NCR 2224	12:17 NCR 1608	L						
15A NCAC 10F .0330	13:03 NCR 269									
15A NCAC 10F .0345	12:06 NCR 445	12:19 NCR 1781	12:12 NCR 1004	*	Approve	04/15/98			13:01 NCR 43	
15A NCAC 10F .0347	12:06 NCR 445	12:19 NCR 1781	12:12 NCR 1004	*	Approve	04/15/98			13:01 NCR 43	
15A NCAC 10F .0359	12:19 NCR 1763									
15A NCAC 10G .0402	12:06 NCR 445		12:12 NCR 1004	*	Approve	04/15/98			13:01 NCR 43	
15A NCAC 10G .0403	12:06 NCR 445		12:12 NCR 1004	*	Approve	04/15/98			13:01 NCR 43	
15A NCAC 10G .0404	12:06 NCR 445		12:12 NCR 1004	*	**Extend Review** **Object**	**04/15/98** **06/18/98**				

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				
15A NCAC 10H .0802	12:06 NCR 445		12:13 NCR 1127	*	Approve	04/15/98	*		13:01 NCR 43	
15A NCAC 10H .0810	12.06 NCR 445		12:13 NCR 1137	*	Approve	04/15/98	*		13:01 NCR 43	
FINAL DECISION LETTERS										
Voting Rights Act										13:02 NCR 173
GENERAL CONTRACTORS LICENSING BOARD										
21 NCAC 12 .0204	11:28 NCR 2117		12:04 NCR 292	*	Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 12 .0503	11:28 NCR 2117									
21 NCAC 12 .0504	11:28 NCR 2117									
21 NCAC 12 .0902	11:28 NCR 2117									
21 NCAC 12 .0905	11:28 NCR 2117									
21 NCAC 12 .0906	11:28 NCR 2117									
21 NCAC 12 .0907	11:28 NCR 2117									
21 NCAC 12 .0908	11:28 NCR 2117									
21 NCAC 12 .0909	11:28 NCR 2117									
21 NCAC 12 .0910	11:28 NCR 2117									
21 NCAC 12 .0911	11:28 NCR 2117									
21 NCAC 12 .0912	11:28 NCR 2117									
GOVERNOR'S EXECUTIVE ORDERS										
Number 136 - Eff. 06/05/98										13:01 NCR 1
HEALTH AND HUMAN SERVICES										
Aging										
10 NCAC 22	10:23 NCR 2956									
Child Day Care Commission										
10 NCAC 03U .0102	12:21 NCR 1873									
10 NCAC 03U .0300	12:21 NCR 1873									
10 NCAC 03U .0302	12:08 NCR 617		12:13 NCR 1098	*	Object Approve	03/20/98 04/15/98			13:01 NCR 43	
10 NCAC 03U .0602	11:24 NCR 1817	12:08 NCR 710								
10 NCAC 03U .0604	11:24 NCR 1817	12:08 NCR 710								

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				
10 NCAC 03U .0605	11:24 NCR 1817	12:08 NCR 710								
10 NCAC 03U .0605	12:08 NCR 710		12:13 NCR 1098	S/L	Approve	03/20/98	*		12:23 NCR 2100	Pending Leg. Action
10 NCAC 03U .0703	12:08 NCR 617		12:13 NCR 1098	*	Approve	03/20/98	*		12:23 NCR 2100	Pending Leg. Action
10 NCAC 03U .0704	12:08 NCR 617		12:13 NCR 1098	*	Object Approve	03/20/98 04/15/98	*		13:01 NCR 43	Pending Leg. Action
10 NCAC 03U .0705	11:14 NCR 1108		11:27 NCR 2054	*						
10 NCAC 03U .0705	11:24 NCR 1817	12:08 NCR 710								
10 NCAC 03U .0707	12:08 NCR 617		12:13 NCR 1098	*	Approve	03/20/98	*		12:23 NCR 2100	Pending Leg. Action
10 NCAC 03U .0708	12:08 NCR 617		12:13 NCR 1098	*	Approve	03/20/98	*		12:23 NCR 2100	Pending Leg. Action
10 NCAC 03U .0710	12:08 NCR 617		12:13 NCR 1098	*	Approve	04/15/98	*		13:01 NCR 43	Pending Leg. Action
10 NCAC 03U .0806	12:08 NCR 617		12:13 NCR 1098	*	Approve	04/15/98	*		13:01 NCR 43	
10 NCAC 03U .0901	11:08 NCR 449		11:17 NCR 1338	*	**Object**	**03/20/98**				
10 NCAC 03U .1600	12:21 NCR 1873									
10 NCAC 03U .1700	12:21 NCR 1873									
10 NCAC 03U .1720	12:08 NCR 617		12:13 NCR 1098	*	Object Approve	03/20/98 04/15/98	*		13:01 NCR 43	
10 NCAC 03U .2000	12:21 NCR 1873									
10 NCAC 03U .2500	12:21 NCR 1873									
Facility Services										
Certificate of Public Advantage (COPA)										13:03 NCR 261
Public Notice - Draft 1999 State Medical Facilities Plan										13:02 NCR 171
10 NCAC 03R .0214	12:08 NCR 617		13:03 NCR 270	*						
10 NCAC 03R .3000	11:23 NCR 1780									
10 NCAC 03R .3001	10:23 NCR 2956		11:06 NCR 328	S/L/SE						
10 NCAC 03R .3030	10:23 NCR 2956		11:06 NCR 328	S/L/SE						
10 NCAC 03R .3032	10:23 NCR 2956		11:06 NCR 328	S/L/SE						
10 NCAC 03R .3040	10:23 NCR 2956		11:06 NCR 328	S/L/SE						
10 NCAC 03R .3050	10:23 NCR 2956		11:06 NCR 328	S/L/SE						
10 NCAC 03R .3051		12:15 NCR 1431	13:02 NCR 178	*						
10 NCAC 03R .3053		11:22 NCR 1713								

Agency/Rule Citation	Rule-making Proceedings	Tempurary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				
10 NCAC 03R .3053		12:06 NCR 481								
10 NCAC 03R .3060		12:06 NCR 481								
10 NCAC 03R .3061		12:06 NCR 481								
10 NCAC 03R .3063		12:06 NCR 481								
10 NCAC 03R .3065		12:06 NCR 481								
10 NCAC 03R .3072		12:06 NCR 481								
10 NCAC 03R .6001	11:22 NCR 1704									
10 NCAC 03R .6101		12:15 NCR 1431	13:02 NCR 178	*						
10 NCAC 03R .6102		12:15 NCR 1431	13:02 NCR 178	*						
10 NCAC 03R .6103		12:15 NCR 1431	13:02 NCR 178	*						
10 NCAC 03R .6104		12:15 NCR 1431	13:02 NCR 178	*						
10 NCAC 03R .6105		12:15 NCR 1431	13:02 NCR 178	*						
10 NCAC 03R .6106		12:15 NCR 1431	13:02 NCR 178	*						
10 NCAC 03R .6107		12:15 NCR 1431	13:02 NCR 178	S/L/SE						
10 NCAC 03R .6108		12:15 NCR 1431	13:02 NCR 178	*						
10 NCAC 03R .6109		12:15 NCR 1431	13:02 NCR 178	*						
10 NCAC 03R .6110		12:15 NCR 1431	13:02 NCR 178	*						
10 NCAC 03R .6111		12:15 NCR 1431	13:02 NCR 178	*						
10 NCAC 03R .6112		12:15 NCR 1431	13:02 NCR 178	S/L/SE						
10 NCAC 03R .6113		12:15 NCR 1431	13:02 NCR 178	*						
10 NCAC 03R .6114		12:15 NCR 1431	13:02 NCR 178	*						
10 NCAC 03R .6115		12:15 NCR 1431	13:02 NCR 178	*						
10 NCAC 03R .6116		12:15 NCR 1431	13:02 NCR 178	*						
10 NCAC 03R .6117		12:15 NCR 1431	13:02 NCR 178	*						
10 NCAC 03R .6118		12:15 NCR 1431	13:02 NCR 178	*						
10 NCAC 03R .6119		12:15 NCR 1431	13:02 NCR 178	*						
10 NCAC 03R .6120		12:15 NCR 1431	13:02 NCR 178	S/L/SE						
10 NCAC 03R .6121		12:15 NCR 1431	13:02 NCR 178	S/L/SE						

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				
10 NCAC 03R .6122		12:15 NCR 1431	13:02 NCR 178	S/L/SE						
10 NCAC 03R .6123		12:15 NCR 1431	13:02 NCR 178	S/L/SE						
10 NCAC 03R .6124		12:15 NCR 1431	13:02 NCR 178	S/L/SE						
10 NCAC 03R .6125		12:15 NCR 1431	13:02 NCR 178	*						
10 NCAC 03R .6126		12:15 NCR 1431	13:02 NCR 178	*						
10 NCAC 03R .6127		12:15 NCR 1431	13:02 NCR 178	*						
10 NCAC 03R .6128		12:15 NCR 1431	13:02 NCR 178	*						
10 NCAC 03R .6129		12:15 NCR 1431	13:02 NCR 178	S/L/SE						
10 NCAC 03R .6130		12:15 NCR 1431	13:02 NCR 178	*						
10 NCAC 03R .6131		12:15 NCR 1431	13:02 NCR 178	*						
10 NCAC 03R .6132		12:15 NCR 1431	13:02 NCR 178	*						
10 NCAC 03R .6133		12:15 NCR 1431	13:02 NCR 178	*						
10 NCAC 03R .6134		12:15 NCR 1431	13:02 NCR 178	*						
10 NCAC 03R .6135		12:15 NCR 1431	13:02 NCR 178	*						
10 NCAC 03R .6136		12:15 NCR 1431	13:02 NCR 178	*						
10 NCAC 03R .6137		12:15 NCR 1431	13:02 NCR 178	*						
10 NCAC 03R .6138		12:15 NCR 1431	13:02 NCR 178	*						
10 NCAC 03R .6139		12:15 NCR 1431	13:02 NCR 178	*						
10 NCAC 03R .6140		12:15 NCR 1431	13:02 NCR 178	*						
10 NCAC 03R .6141		12:15 NCR 1431	13:02 NCR 178	*						
10 NCAC 03S	12:24 NCR 2194									
Health Services										
15A NCAC 16A .0101	12:22 NCR 1979		13:02 NCR 234	*						
15A NCAC 16A .0106	12:22 NCR 1979		13:02 NCR 234	*						
15A NCAC 16A .0108	12:22 NCR 1979		13:02 NCR 234	*						
15A NCAC 24A .0101	12:22 NCR 1979		13:02 NCR 244	*						
15A NCAC 24A .0102	12:22 NCR 1979		13:02 NCR 244	*						
15A NCAC 24A .0302	12:22 NCR 1979		13:02 NCR 244	*						

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				
15A NCAC 24A .0402	12:22 NCR 1979		13:02 NCR 244	*						
15A NCAC 24A .0403	12:22 NCR 1979		13:02 NCR 244	*						
15A NCAC 24A .0404	12:22 NCR 1979		13:02 NCR 244	*						
Medical Assistance										
10 NCAC 26B .0103	12:18 NCR 1694		13:01 NCR 5	*						
10 NCAC 26D .0110	12:06 NCR 444		12:21 NCR 1875	*						
10 NCAC 26H .0101	11:14 NCR 1108									
10 NCAC 26H .0102	11:14 NCR 1108									
10 NCAC 26H .0102	12:09 NCR 743	12:14 NCR 1341	12:18 NCR 1696	S/L/SE						
10 NCAC 26H .0211	12:09 NCR 743	12:14 NCR 1341	12:18 NCR 1696	S/L/SE						
10 NCAC 26H .0212		12:09 NCR 827								
10 NCAC 26H .0213		11:26 NCR 1997								
10 NCAC 26H .0213		12:09 NCR 827								
10 NCAC 26H .0304		13:03 NCR 316		S/L						
10 NCAC 26H .0401	12:08 NCR 618	12:14 NCR 1341	12:21 NCR 1875	S/L						
10 NCAC 26H .0401		13:02 NCR 248								
10 NCAC 26H .0602		12:04 NCR 313	12:15 NCR 1419	S\L	Approve	04/15/98	*		13:01 NCR 43	
10 NCAC 26I .0101	13:02 NCR 175									
10 NCAC 26K .0106	12:05 NCR 337									
10 NCAC 26K .0106	12:06 NCR 444		12:21 NCR 1875	*						
10 NCAC 26M .0201	12:06 NCR 444		13:01 NCR 5	*						
10 NCAC 26M .0202	12:06 NCR 444		13:01 NCR 5	*						
10 NCAC 26M .0203	12:05 NCR 337									
10 NCAC 26M .0203	12:06 NCR 444		13:01 NCR 5	*						
10 NCAC 26M .0204	12:06 NCR 444		13:01 NCR 5	*						
10 NCAC 26M .0305	13:02 NCR 175									
10 NCAC 50A .0604	12:06 NCR 444		12:21 NCR 1875	*						
10 NCAC 50B .0202	12:06 NCR 444		12:21 NCR 1875	*						

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				
10 NCAC 50B .0302	13:02 NCR 175									
10 NCAC 50B .0311	13:03 NCR 268									
10 NCAC 50B .0313	13:02 NCR 175									
Medical Care Commission										
10 NCAC 03D .1500	11:23 NCR 1779									
Mental Health, Developmental Disabilities and Substance Abuse Services										
10 NCAC 14G .0102		12:12 NCR 1060	12:19 NCR 1766	*	**Object 06/18/98**					
10 NCAC 14V .0800	12:20 NCR 1820									
10 NCAC 14V .3800	12:20 NCR 1820									
10 NCAC 14V .4000	12:20 NCR 1820									
10 NCAC 14V .4301	12:19 NCR 1762									
10 NCAC 14V .4302	12:19 NCR 1762									
10 NCAC 14V .4303	12:19 NCR 1762									
10 NCAC 14V .4304	12:19 NCR 1762									
10 NCAC 14V .4305	12:19 NCR 1762									
10 NCAC 14V .4306	12:19 NCR 1762									
10 NCAC 14V .5000	12:20 NCR 1820									
10 NCAC 45H .0205	11:19 NCR 1762	12:24 NCR 2223		*						
Secretary of Health and Human Services										
10 NCAC 14C .1151	12:20 NCR 1820		13:02 NCR 198	*						
10 NCAC 14V .7006		12:01 NCR 31	12:07 NCR 511	*						
10 NCAC 21B .0117		12:17 NCR 1616	12:21 NCR 1875	S						
10 NCAC 49B .0315		12:18 NCR 1703	13:02 NCR 203	*						
Social Services Commission										
10 NCAC 24A .0508	12:12 NCR 993	12:13 NCR 1180	12:23 NCR 2090	*						
10 NCAC 30 .0207	12:11 NCR 919	12:14 NCR 1347	12:15 NCR 1420	*	Approve	05/21/98			13:02 NCR 249	
10 NCAC 41A .0107		12:11 NCR 938	12:15 NCR 1420	*	**Object**	**05/21/98**				
10 NCAC 41E	12:11 NCR 919									

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					Action	Date				
10 NCAC 41F .0707		12:11 NCR 938	12:15 NCR 1420	S	Approve	05/21/98			13:02 NCR 249	
10 NCAC 41F .0813		12:11 NCR 938	12:15 NCR 1420	S	Approve	05/21/98			13:02 NCR 249	
10 NCAC 41G	12:11 NCR 919									
10 NCAC 41I .0100	10:17 NCR 2228									
10 NCAC 41I .0102	10:17 NCR 2228		10:21 NCR 2687	*						
10 NCAC 42C .2301	12:22 NCR 1979									
10 NCAC 42C .3401		12:13 NCR 1180	13:02 NCR 200	*						
10 NCAC 42C .3403		12:13 NCR 1180	13:02 NCR 200	*						
10 NCAC 42C .3404		12:13 NCR 1180	13:02 NCR 200	*						
10 NCAC 42C .3601		12:13 NCR 1180	13:02 NCR 200	*						
10 NCAC 42R .0201	12:11 NCR 919	12:13 NCR 1180	12:23 NCR 2090	S/L						
10 NCAC 47A .0502		12:11 NCR 938	12:15 NCR 1420	*	Approve	05/21/98			13:02 NCR 249	
10 NCAC 47B .0102		12:11 NCR 938	12:15 NCR 1420	*	Object	05/21/98				
					Approve	06/18/98	*		13:03 NCR 334	
10 NCAC 47B .0303		12:11 NCR 938	12:15 NCR 1420	*	Approve	05/21/98			13:02 NCR 249	
10 NCAC 47B .0304		12:11 NCR 938	12:15 NCR 1420	*	Approve	05/21/98			13:02 NCR 249	
10 NCAC 47B .0305		12:11 NCR 938	12:15 NCR 1420	*	Approve	05/21/98	*		13:02 NCR 249	
10 NCAC 47B .0403		12:11 NCR 938	12:15 NCR 1420	*	Approve	05/21/98	*		13:02 NCR 249	
10 NCAC 49B .0608	12:20 NCR 1822	13:03 NCR 320								
Vocational Rehabilitation Services										
10 NCAC 20C .0100	12:24 NCR 2202									
10 NCAC 20C .0203	12:24 NCR 2202									
10 NCAC 20C .0206	12:24 NCR 2202									
INSURANCE										
11 NCAC 06	12:09 NCR 744									
11 NCAC 12	12:09 NCR 744									
11 NCAC 12 .0800	13:01 NCR 2									
11 NCAC 12 .0840	13:01 NCR 2	13:03 NCR 323								
11 NCAC 12 .0841	13:01 NCR 2	13:03 NCR 323								

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				
11 NCAC 12 .0842	13:01 NCR 2	13:03 NCR 323								
11 NCAC 12 .1000	13:01 NCR 2									
11 NCAC 12 .1801		12:11 NCR 942	12:15 NCR 1424	*	Approve	04/15/98			13:01 NCR 43	
11 NCAC 12 .1802		12:11 NCR 942	12:15 NCR 1424	*	Approve	04/15/98			13:01 NCR 43	
11 NCAC 12 .1803		12:11 NCR 942	12:15 NCR 1424	*	Approve	04/15/98	*		13:01 NCR 43	
11 NCAC 12 .1804		12:11 NCR 942	12:15 NCR 1424	*	Approve	04/15/98	*		13:01 NCR 43	
11 NCAC 13	12:09 NCR 744									
11 NCAC 14	12:09 NCR 744									
11 NCAC 15	12:09 NCR 744									
11 NCAC 16	12:09 NCR 744									
11 NCAC 17	12:09 NCR 744									
11 NCAC 20	12:09 NCR 744									
11 NCAC 21	12:09 NCR 744									
North Carolina Manufactured Housing Board										
11 NCAC 8 .0900	13:01 NCR 2									
JUSTICE										
Alarm Systems Licensing Board										
12 NCAC 11	11:30 NCR 2300									
12 NCAC 11 .0204	12:12 NCR 993		12:20 NCR 1823	*						
12 NCAC 11 .0210	12:08 NCR 618		12:20 NCR 1823	*						
12 NCAC 11 .0501	11:30 NCR 2300		12:20 NCR 1823	*						
12 NCAC 11 .0502	11:30 NCR 2300		12:20 NCR 1823	*						
12 NCAC 11 .0503	11:30 NCR 2300		12:20 NCR 1823	*						
12 NCAC 11 .0504	11:30 NCR 2300		12:20 NCR 1823	*						
12 NCAC 11 .0505	11:30 NCR 2300		12:20 NCR 1823	*						
12 NCAC 11 .0506	11:30 NCR 2300		12:20 NCR 1823	*						
12 NCAC 11 .0507	11:30 NCR 2300		12:20 NCR 1823	*						
Criminal Justice Education and Training Standards Commission										

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				
12 NCAC 09A .0103	12:21 NCR 1873		13:01 NCR 6	*						
12 NCAC 09B .0101	12:21 NCR 1873		13:01 NCR 6	*						
12 NCAC 09B .0210	12:21 NCR 1873		13:01 NCR 6	*						
12 NCAC 09B .0211	12:21 NCR 1873		13:01 NCR 6	*						
12 NCAC 09B .0212	12:21 NCR 1873		13:01 NCR 6	*						
12 NCAC 09B .0213	12:21 NCR 1873		13:01 NCR 6	*						
12 NCAC 09B .0214	12:21 NCR 1873		13:01 NCR 6	*						
12 NCAC 09B .0215	12:21 NCR 1873		13:01 NCR 6	*						
12 NCAC 09B .0218	12:21 NCR 1873		13:01 NCR 6	*						
12 NCAC 09B .0219	12:21 NCR 1873		13:01 NCR 6	*						
12 NCAC 09B .0220	12:21 NCR 1873		13:01 NCR 6	*						
12 NCAC 09B .0221	12:21 NCR 1873		13:01 NCR 6	*						
12 NCAC 09B .0222	12:21 NCR 1873		13:01 NCR 6	*						
12 NCAC 09B .0301	12:21 NCR 1873		13:01 NCR 6	*						
12 NCAC 09B .0309	12:21 NCR 1873		13:01 NCR 6	*						
12 NCAC 09B .0310	12:21 NCR 1873		13:01 NCR 6	*						
12 NCAC 09B .0311	12:21 NCR 1873		13:01 NCR 6	*						
12 NCAC 09B .0404	12:21 NCR 1873		13:01 NCR 6	*						
12 NCAC 09B .0408	12:21 NCR 1873		13:01 NCR 6	*						
12 NCAC 09B .0409	12:21 NCR 1873		13:01 NCR 6	*						
12 NCAC 09B .0414	12:21 NCR 1873		13:01 NCR 6	*						
12 NCAC 09B .0416	12:21 NCR 1873		13:01 NCR 6	*						
12 NCAC 09C .0308	12:21 NCR 1873		13:01 NCR 6	*						
Private Protective Services Board										
12 NCAC 07D .0204	11:14 NCR 1108		12:08 NCR 622	*	Object Approve	03/20/98 06/18/98	*		13:03 NCR 334	
12 NCAC 07D .1106	11:14 NCR 1108		12:08 NCR 622	*	Object Approve	03/20/98 06/18/98	*		13:03 NCR 334	
12 NCAC 07D .1201	11:10 NCR 818		12:14 NCR 1263	*						
12 NCAC 07D .1202	11:10 NCR 818		12:14 NCR 1263	*						

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				
12 NCAC 07D .1301	11:16 NCR 1268		12:14 NCR 1263	*						
12 NCAC 07D .1302	11:16 NCR 1268		12:14 NCR 1263	*						
12 NCAC 07D .1303	11:16 NCR 1268		12:14 NCR 1263	*						
12 NCAC 07D .1304	11:16 NCR 1268		12:14 NCR 1263	*						
12 NCAC 07D .1305	11:16 NCR 1268		12:14 NCR 1263	*						
12 NCAC 07D .1306	11:16 NCR 1268		12:14 NCR 1263	*						
12 NCAC 07D .1307	11:16 NCR 1268		12:14 NCR 1263	*						
Sheriffs' Education and Training Standards Commission										
12 NCAC 10B .0206	12:07 NCR 508	12:18 NCR 1703	12:18 NCR 1703	*	Approve	06/18/98			13:03 NCR 334	
12 NCAC 10B .1103	12:07 NCR 508	12:18 NCR 1703	12:08 NCR 624							
12 NCAC 10B .1104	12:07 NCR 508	12:18 NCR 1703	12:08 NCR 624							
LABOR										
13 NCAC WORD Div	13:03 NCR 268									
Boiler and Pressure Vessel Division										
13 NCAC 13	13:03 NCR 269									
Occupational Safety and Health										
13 NCAC 07A .0900	11:11 NCR 881									
13 NCAC 07F	11:03 NCR 106									
13 NCAC 07F	13:02 NCR 176									
13 NCAC 07F .0201	11:03 NCR 106									
13 NCAC 07F .0301	11:03 NCR 106									
Wage and Hour Division										
13 NCAC 12 .0101	13:03 NCR 268									
13 NCAC 12 .0303	13:03 NCR 268									
13 NCAC 12 .0304	13:03 NCR 268									
13 NCAC 12 .0305	13:03 NCR 268									
13 NCAC 12 .0306	13:03 NCR 268									
13 NCAC 12 .0307	13:03 NCR 268									

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				
13 NCAC 12 .0501	13:03 NCR 268									
13 NCAC 12 .0502	13:03 NCR 268									
13 NCAC 12 .0801	13:03 NCR 268									
13 NCAC 12 .0802	13:03 NCR 268									
LANDSCAPE ARCHITECTS, BOARD OF										
21 NCAC 26 .0104		12:08 NCR 730								
21 NCAC 26 .0105		12:08 NCR 730								
21 NCAC 26 .0302		12:08 NCR 730								
21 NCAC 26 .0506		12:08 NCR 730								
21 NCAC 26 .0507		12:08 NCR 730								
21 NCAC 26 .0508		12:08 NCR 730								
21 NCAC 26 .0509		12:08 NCR 730								
MEDICAL BOARD										
21 NCAC 32B	11:18 NCR 1369									
21 NCAC 32B	12:04 NCR 245									
21 NCAC 32F .0103		11:18 NCR 1386 Temp Expired	12:04 NCR 294				*			
21 NCAC 32F .0103		12:14 NCR 1354	12:21 NCR 1881				*			
21 NCAC 32H .0402		12:04 NCR 314								
21 NCAC 32M	12:19 NCR 1765									
21 NCAC 32O	11:18 NCR 1369									
MORTUARY SCIENCE, BOARD OF										
21 NCAC 34A .0201		12:07 NCR 556								
21 NCAC 34C	12:09 NCR 745									
MUNICIPAL INCORPORATIONS PETITION										
NURSING, BOARD OF										
21 NCAC 36 .0227	12:05 NCR 338									
OPTICIANS, BOARD OF										
21 NCAC 40 .0108		12:07 NCR 557								

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				
OPTOMETRY, BOARD OF										
21 NCAC 42	12:06 NCR 453									
21 NCAC 42E .0102		12:06 NCR 487	12:12 NCR 1058	*	Approve	04/15/98			13:01 NCR 43	
PHARMACY, BOARD OF										
21 NCAC 46 .1317	13:01 NCR 3									
21 NCAC 46 .1414	N/A	N/A	N/A		Approve	04/15/98			13:01 NCR 43	
21 NCAC 46 .1414	12:24 NCR 2203									
21 NCAC 46 .1606	13:01 NCR 3									
21 NCAC 46 .1601	12:03 NCR 168		12:07 NCR 527	*						
			12:09 NCR 797	*	Approve	03/20/98			12:23 NCR 2100	Pending Leg. Action
21 NCAC 46 .1601	12:24 NCR 2203									
21 NCAC 46 .1608	12:24 NCR 2203									
21 NCAC 46 .1609	12:24 NCR 2203									
21 NCAC 46 .1703	12:24 NCR 2203									
21 NCAC 46 .1804	12:03 NCR 168		12:07 NCR 527	*						
			12:09 NCR 797	*	State Budget	03/20/98				
			13:02 NCR 246	SE						
21 NCAC 46 .1809	12:24 NCR 2203									
21 NCAC 46 .1813	N/A	N/A	N/A		Approve	04/15/98			13:01 NCR 43	
21 NCAC 46 .2103	12:03 NCR 168		12:07 NCR 527	*						
			12:09 NCR 797	*						
21 NCAC 46 .2301	12:03 NCR 168		12:07 NCR 527	*						
			12:09 NCR 797	*						
21 NCAC 46 .2304	12:24 NCR 2203									
21 NCAC 46 .2604	12:24 NCR 2203									
21 NCAC 46 .2609	12:24 NCR 2203									
21 NCAC 46 .2611	N/A	N/A	N/A		Approve	04/15/98			13:01 NCR 43	
21 NCAC 46 .2611	12:24 NCR 2203									
PHYSICAL THERAPY EXAMINERS										
21 NCAC 48A .0103	12:08 NCR 619		12:13 NCR 1150	*	Object	03/20/98				

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					Action	Date				
					Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 48A .0105	12:08 NCR 619		12:13 NCR 1150	*	Object	03/20/98				
					Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 48C .0401	12:08 NCR 619		12:13 NCR 1150	*	Object	03/20/98				
					Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 48D .0102	12:08 NCR 619		12:13 NCR 1150	*	Object	03/20/98				
					Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 48D .0105	12:08 NCR 619		12:13 NCR 1150	*	Object	03/20/98				
					Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 48D .0112	12:08 NCR 619		12:13 NCR 1150	*	Object	03/20/98				
					Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 48F .0102	12:08 NCR 619		12:13 NCR 1150	*	Object	03/20/98				
					Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 48G .0203	12:08 NCR 619		12:13 NCR 1150	*	Object	03/20/98				
					Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 48G .0404	12:08 NCR 619		12:13 NCR 1150	*	Object	03/20/98				
					Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 48G .0601	12:08 NCR 619		12:13 NCR 1150	*	Object	03/20/98				
					Approve	04/15/98	*		13:01 NCR 43	
PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS, EXAMINERS OF										
21 NCAC 50 .0106	12:07 NCR 509									
21 NCAC 50 .0202	12:07 NCR 509									
21 NCAC 50 .0301	12:07 NCR 509	12:07 NCR 557	12:16 NCR 1490	*	Approve	04/15/98			13:01 NCR 43	
21 NCAC 50 .0306	12:07 NCR 509	12:07 NCR 557	12:16 NCR 1490	*	Approve	04/15/98			13:01 NCR 43	
21 NCAC 50 .0404	12:07 NCR 509	12:07 NCR 557	12:16 NCR 1490	*	Approve	04/15/98			13:01 NCR 43	
21 NCAC 50 .0405	12:07 NCR 509		12:16 NCR 1490	*	Approve	04/15/98			13:01 NCR 43	
21 NCAC 50 .0506	12:07 NCR 509	12:07 NCR 557								
21 NCAC 50 .0510	12:07 NCR 509		12:16 NCR 1490	*	Approve	04/15/98			13:01 NCR 43	
21 NCAC 50 .0511	12:07 NCR 509	12:07 NCR 557	12:16 NCR 1490	*	Approve	04/15/98			13:01 NCR 43	
21 NCAC 50 .1102	12:07 NCR 509	12:07 NCR 557	12:16 NCR 1490	S	Approve	04/15/98			13:01 NCR 43	
21 NCAC 50 .1104	12:07 NCR 509		12:16 NCR 1490	*	Approve	04/15/98			13:01 NCR 43	
21 NCAC 50 .1201	12:07 NCR 509									
21 NCAC 50 .1205	12:07 NCR 509									
21 NCAC 50 .1206	12:07 NCR 509									

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					Action	Date				
21 NCAC 50 .1210	12:07 NCR 509									
21 NCAC 50 .1212	12:07 NCR 509									
21 NCAC 50 .1302	12:07 NCR 509									
PROFESSIONAL ENGINEERS AND LAND SURVEYORS										
21 NCAC 56 .0103	12:08 NCR 619		12:16 NCR 1492	*	Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 56 .0104	12:08 NCR 619		12:16 NCR 1492	*	Approve	04/15/98			13:01 NCR 43	
21 NCAC 56 .0401	12:08 NCR 619		12:16 NCR 1492	*	Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 56 .0403	12:08 NCR 619		12:16 NCR 1492	*	Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 56 .0404	12:08 NCR 619		12:16 NCR 1492	*	Approve	04/15/98			13:01 NCR 43	
21 NCAC 56 .0405	12:08 NCR 619		12:16 NCR 1492	*	Approve	04/15/98			13:01 NCR 43	
21 NCAC 56 .0501	12:08 NCR 619		12:16 NCR 1492	*	Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 56 .0502	12:08 NCR 619		12:16 NCR 1492	S	Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 56 .0503	12:08 NCR 619		12:16 NCR 1492	*	Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 56 .0505	12:08 NCR 619		12:16 NCR 1492	S	Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 56 .0601	12:08 NCR 619		12:16 NCR 1492	*	Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 56 .0602	12:08 NCR 619		12:16 NCR 1492	S	Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 56 .0603	12:08 NCR 619		12:16 NCR 1492	*	Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 56 .0606	12:08 NCR 619		12:16 NCR 1492	S	Approve	04/15/98			13:01 NCR 43	
21 NCAC 56 .0701	12:08 NCR 619		12:16 NCR 1492	*	Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 56 .0702	12:08 NCR 619		12:16 NCR 1492	*	Approve	04/15/98			13:01 NCR 43	
21 NCAC 56 .0901	12:08 NCR 619		12:16 NCR 1492	*	Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 56 .0902	12:08 NCR 619		12:16 NCR 1492	*	Approve	04/15/98			13:01 NCR 43	
21 NCAC 56 .1102	12:08 NCR 619		12:16 NCR 1492	*	Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 56 .1103	12:08 NCR 619		12:16 NCR 1492	*	Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 56 .1104	12:08 NCR 619		12:16 NCR 1492	*	Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 56 .1105	12:08 NCR 619		12:16 NCR 1492	*	Approve	04/15/98			13:01 NCR 43	
21 NCAC 56 .1106	12:08 NCR 619		12:16 NCR 1492	*	Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 56 .1201	12:08 NCR 619		12:16 NCR 1492	*	Approve	04/15/98	*		13:01 NCR 43	

Agency/Rule Citation	Rule-making Proceedings	Temporary Rule	Notice of Text	Fiscal Note	RRC Status		Text differs from proposal	Effective by Governor	Approved Rule	Other
					Action	Date				
21 NCAC 56 .1203	12:08 NCR 619		12:16 NCR 1492	*	Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 56 .1205	12:08 NCR 619		12:16 NCR 1492	*	Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 56 .1301	12:08 NCR 619		12:16 NCR 1492	*	Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 56 .1302	12:08 NCR 619		12:16 NCR 1492	*	Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 56 .1403	12:08 NCR 619		12:16 NCR 1492	*	Approve	04/15/98			13:01 NCR 43	
21 NCAC 56 .1409	12:08 NCR 619		12:16 NCR 1492	*	Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 56 .1411	12:08 NCR 619		12:16 NCR 1492	*	Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 56 .1602	12:08 NCR 619		12:16 NCR 1492	*	Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 56 .1603	12:08 NCR 619		12:16 NCR 1492	*	Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 56 .1604	12:08 NCR 619		12:16 NCR 1492	*	Approve	04/15/98			13:01 NCR 43	
21 NCAC 56 .1703	12:08 NCR 619		12:16 NCR 1492	*	Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 56 .1704	12:08 NCR 619		12:16 NCR 1492	*	Approve	04/15/98			13:01 NCR 43	
21 NCAC 56 .1705	12:08 NCR 619		12:16 NCR 1492	*	Approve	04/15/98			13:01 NCR 43	
21 NCAC 56 .1711	12:08 NCR 619		12:16 NCR 1492	*	Approve	04/15/98			13:01 NCR 43	
PSYCHOLOGY BOARD										
21 NCAC 54 .1611	12:05 NCR 338									
21 NCAC 54 .1612	12:05 NCR 338									
21 NCAC 54 .1613	12:05 NCR 338									
21 NCAC 54 .2006	12:05 NCR 338									
21 NCAC 54 .2010	12:05 NCR 338									
21 NCAC 54 .2104	12:05 NCR 338									
21 NCAC 54 .2301	12:05 NCR 338									
21 NCAC 54 .2302	12:05 NCR 338									
21 NCAC 54 .2303	12:05 NCR 338									
21 NCAC 54 .2304	12:05 NCR 338									
21 NCAC 54 .2305	12:05 NCR 338									
21 NCAC 54 .2306	12:05 NCR 338									
21 NCAC 54 .2307	12:05 NCR 338									

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					Action	Date				
21 NCAC 54 .2308	12:05 NCR 338									
21 NCAC 54 .2309	12:05 NCR 338									
21 NCAC 54 .2310	12:05 NCR 338									
21 NCAC 54 .2311	12:05 NCR 338									
21 NCAC 54 .2312	12:05 NCR 338									
21 NCAC 54 .2313	12:05 NCR 338									
21 NCAC 54 .2314	12:05 NCR 338									
21 NCAC 54 .2401	12:05 NCR 338									
21 NCAC 54 .2402	12:05 NCR 338									
21 NCAC 54 .2501	12:05 NCR 338									
21 NCAC 54 .2502	12:05 NCR 338									
21 NCAC 54 .2503	12:05 NCR 338									
21 NCAC 54 .2504	12:05 NCR 338									
21 NCAC 54 .2505	12:05 NCR 338									
21 NCAC 54 .2601	12:05 NCR 338									
21 NCAC 54 .2602	12:05 NCR 338									
21 NCAC 54 .2704	12:05 NCR 338									
21 NCAC 54 .2705	12:05 NCR 338									
21 NCAC 54 .2706	12:05 NCR 338									
PUBLIC EDUCATION										
16 NCAC 06C .0310			12:01 NCR 18	*						
		12:03 NCR 210								Temp Filed over obj
16 NCAC 06C .0502		12:09 NCR 834	12:19 NCR 1773	N/A						
16 NCAC 06C .0602			12:12 NCR 1050	*	Object Approve	03/20/98 04/15/98	*		13:01 NCR 43	
16 NCAC 06D .0103		12:22 NCR 2010								
16 NCAC 06E .0105		12:05 NCR 433	12:19 NCR 1773	N/A						
16 NCAC 06G .0305			12:19 NCR 1773	N/A						
16 NCAC 06G .0310			12:19 NCR 1773	N/A						

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					Action	Date				
16 NCAC 06G .0311		12:22 NCR 2010								
16 NCAC 06G .0501		12:12 NCR 1071	12:19 NCR 1773	N/A						
Public School Administration, Standards Board for										
16 NCAC 07 .0202		12:07 NCR 533	12:12 NCR 1052	*	Approve	04/15/98	*		13:01 NCR 43	
REVENUE										
17 NCAC 05B .1402	N/A	N/A	N/A		Approve	04/15/98			13:01 NCR 43	
17 NCAC 05B .1703	N/A	N/A	N/A		Approve	04/15/98			13:01 NCR 43	
17 NCAC 05C .0102			12:14 NCR 1285	*						
17 NCAC 05C .0703			12:14 NCR 1285	*						
17 NCAC 06B .3204			12:17 NCR 1610	*	Approve	06/18/98			13:03 NCR 334	
17 NCAC 09L .0302			12:17 NCR 1610	*	Approve	06/18/98			13:03 NCR 334	
Tax Review Board										13:03 NCR 262
SECRETARY OF STATE										
18 NCAC 06 .1104		12:07 NCR 534	12:14 NCR 1312	*	Object	03/20/98				
					Approve	04/15/98	*		13:01 NCR 43	
18 NCAC 06 .1206		12:07 NCR 534	12:14 NCR 1312	*	Object	03/20/98				
					Approve	04/15/98	*		13:01 NCR 43	
18 NCAC 06 .1212		12:07 NCR 534	12:14 NCR 1312	*	Object	03/20/98				
					Approve	04/15/98	*		13:01 NCR 43	
18 NCAC 06 .1401		12:07 NCR 534	12:14 NCR 1312	*	Object	03/20/98				
					Approve	04/15/98	*		13:01 NCR 43	
18 NCAC 06 .1509		12:07 NCR 534	12.14 NCR 1312	*	Object	03/20/98				
					Approve	04/15/98	*		13:01 NCR 43	
18 NCAC 06 .1702		12:07 NCR 534	12:14 NCR 1312	*	Object	03/20/98				
					Approve	04/15/98	*		13:01 NCR 43	
18 NCAC 06 .1703		12:07 NCR 534	12:14 NCR 1312	*	Object	03/20/98				
					Approve	04/15/98	*		13:01 NCR 43	
18 NCAC 06 .1705		12:07 NCR 534	12:14 NCR 1312	*	Object	03/20/98				
					Approve	04/15/98	*		13:01 NCR 43	
18 NCAC 06 .1706		12:07 NCR 534	12:14 NCR 1312	*	Object	03/20/98				
					Approve	04/15/98	*		13:01 NCR 43	
18 NCAC 06 .1802		12:07 NCR 534	12:14 NCR 1312	*						
18 NCAC 06 .1803		12:07 NCR 534	12:14 NCR 1312	*						
18 NCAC 06 .1805		12:07 NCR 534	12:14 NCR 1312	*	Object	03/20/98				

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					Action	Date				
					Approve	04/15/98	*		13:01 NCR 43	
18 NCAC 06 .1811		12:07 NCR 534	12:14 NCR 1312	*	Object	03/20/98				
					Approve	04/15/98	*		13:01 NCR 43	
SPEECH AND LANGUAGE PATHOLOGISTS AND AUDIOLOGIST, BOARD OF EXAMINERS										
21 NCAC 64 .0303	11:23 NCR 1780									
STATE PERSONNEL COMMISSION										
25 NCAC 01D .2516		11:13 NCR 1062 Temp Expired	11:19 NCR 1429	*						
25 NCAC 01D .2517		12:09 NCR 835								
SUBSTANCE ABUSE PROFESSIONAL CERTIFICATION BOARD										
21 NCAC 68	12:09 NCR 745									
21 NCAC 68 .0101		12:11 NCR 944	12:15 NCR 1426	S/L	Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 68 .0102	N/A	N/A	N/A		Approve	04/15/98			13:01 NCR 43	
21 NCAC 68 .0301		12:11 NCR 944	12:15 NCR 1426	S/L	Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 68 .0302		12:11 NCR 944	12:15 NCR 1426	S/L	Approve	04/15/98			13:01 NCR 43	
21 NCAC 68 .0303		12:11 NCR 944	12:15 NCR 1426	S/L	Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 68 .0304		12:11 NCR 944	12:15 NCR 1426	S/L	Approve	04/15/98			13:01 NCR 43	
21 NCAC 68 .0305		12:11 NCR 944	12:15 NCR 1426	S/L	Object	04/15/98				
					Approve	05/21/98	*		13:02 NCR 249	
21 NCAC 68 .0306		12:11 NCR 944	12:15 NCR 1426	S/L	Approve	04/15/98			13:01 NCR 43	
21 NCAC 68 .0307		12:11 NCR 944	12:15 NCR 1426	S/L	Approve	04/15/98			13:01 NCR 43	
21 NCAC 68 .0602	12:09 NCR 745		12:15 NCR 1426	S/L	Approve	04/15/98			13:01 NCR 43	
21 NCAC 68 .0603	12:09 NCR 745		12:15 NCR 1426	S/L	Approve	04/15/98	*		13:01 NCR 43	
21 NCAC 68 .0608	12:09 NCR 745		12:15 NCR 1426	S/L	Approve	04/15/98			13:01 NCR 43	
TRANSPORTATION										
Highways, Division of										
19A NCAC 02D .0406	12:22 NCR 1980									
19A NCAC 02D .0415	12:18 NCR 1694		12:24 NCR 2219	*						
19A NCAC 02D .0816	12:19 NCR 1764		13:01 NCR 41	*						
Motor Vehicles, Division of										

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					Action	Date				
19A NCAC 03I .0100	11:19 NCR 1413									
19A NCAC 03I .0200	11:19 NCR 1413									
19A NCAC 03I .0202	12:18 NCR 1695		12:24 NCR 2220	*						
19A NCAC 03I .0203	12:18 NCR 1695		12:24 NCR 2220	*						
19A NCAC 03I .0300	11:19 NCR 1413									
19A NCAC 03I .0400	11:19 NCR 1413									
19A NCAC 03I .0500	11:19 NCR 1413									
19A NCAC 03I .0501	12:18 NCR 1695		12:24 NCR 2220	*						
19A NCAC 03I .0502	12:18 NCR 1695		12:24 NCR 2220	*						
19A NCAC 03I .0503	12:18 NCR 1695		12:24 NCR 2220	*						
19A NCAC 03I .0600	11:19 NCR 1413									
19A NCAC 03I .0700	11:19 NCR 1413									
19A NCAC 03I .0800	11:19 NCR 1413									
Rail Divisinn										
19A NCAC 06B .0412	12:22 NCR 1981									
19A NCAC 06B .0413	12:22 NCR 1981									
VETERINARY MEDICAL BOARD										
21 NCAC 66 .0207	12:23 NCR 2089									
21 NCAC 66 .0208	12:23 NCR 2089									

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